

**CLARK COUNTY PLANNING COMMISSION
MINUTES OF PUBLIC HEARING
THURSDAY, JUNE 24, 2004**

City Hall Council Chambers
210 East 13th Street
Vancouver, Washington

6:30 p.m.

CALL TO ORDER

The public hearing of the Clark County Planning Commission was called to order at 6:30 p.m. by Chair, Vaughn Lein. The hearing was held at the City Hall Council Chambers, 210 East 13th Street, Vancouver, Washington.

ROLL CALL

Members Present: Dick Deleissegues, Lonnie Moss, Carey Smith, Jada Rupley, and Vaughn Lein, Chair.

Members Absent: Ron Barca, and Jeff Wriston, Vice Chair.

Staff Present: Bob Higbie, Assistant Long Range Manager; Rich Lowry, Chief Deputy Prosecuting Attorney; Sandra Towne, Planner III; Mike Mabrey, Planner II; Oliver Orjiako, Planner III; and Sonja Wiser, Administrative Assistant.

Other: Cindy Holley, Court Reporter.

GENERAL & NEW BUSINESS

A. Approval of Agenda for June 24, 2004

LEIN: The first item is the approval of tonight's agenda. Are there any modifications to the agenda?

TOWNE: Yes. Sandra Towne, Clark County Community Development. We'd like to ask the Planning Commission, there are two proposals, two docket requests, that the staff is recommending for approval. If the Planning Commission has read through those staff reports and feel comfortable and agree with that approval, and if there is no opposition this evening to those, we recommend because of this very long agenda before us this evening that we could begin with those two and vote on them and they would be set aside right from the beginning. The two that we are talking about is the first one which is Stickney/Mueler and that number is Docket 2003-036, and the second one is Abruzzo which is Docket 2003-038A.

DELEISSEGUES: What tab numbers are those, Sandra?

TOWNE: The first one is behind 19 and the second one is behind 22.

DELEISSEGUES: Okay. Thank you.

SMITH: I have some real problems with the Stickney one. I think there are some people here to testify on that one.

TOWNE: Then we will give a staff report on that.

B. Approval of Minutes for April 15 & May 20, 2004

LEIN: Okay. I will then continue on with the approval of the minutes of 4-15 as well as May 20th sent out by mail. Were there any corrections or additions to the minutes? Is there a motion to approve?

RUPLEY: So move.

MOSS: So move.

LEIN: A second?

MOSS: Second.

LEIN: All in favor signify by saying aye.

EVERYBODY: AYE

C. Communications from the Public

None.

PUBLIC HEARING ITEMS & PLANNING COMMISSION ACTION:

A. 2004 Dockets-(Site Specific Requests) amending the 20-Year Growth Management Comprehensive Plan:

D2003-036 (Stickney Mueller) The property owner is seeking to redesignate and rezone parcel 159328-000 for approximately 10 acres from Urban Low (R1-6) to Community Commercial (C-3) located at the northeast corner of NE 39th Street and NE 162nd Avenue. Staff contact **Oliver Orjiako, (360) 397-2375, Ext. 4098**

TOWNE: Yes. Continuing from June 10th we have seven different reports in front of you for this evening. I will just quickly let you know that all of them have gone through

the same process of following the criteria of the comp plan, comprehensive plan, Growth Management Act policies, countywide planning policies and framework planning policies, and also all of them have gone through the SEPA process and have been determined nonsignificant. And with that I will turn it over to Oliver Orjiako who will do the first one which is behind Tab 19.

ORJIAKO: Thank you, Sandra, and also the members of the Planning Commission. This is Docket Item 2003-036 Stickney/Mueler. This request is -- or this application is a request by the applicant to amend the County growth comprehensive plan map and the zoning map as well from R1-6 urban low to community commercial C-3. The last time I was here I did indicate the type of uses that are allowed in the C-3 district. The most intensive use you can find in the C-3 will be perhaps a Fred Meyer store or a Safeway store, but within the C-3 you have other not intensive uses. I use that as an example. The site in question is ten acres and it is located on the northeast corner of NE 162nd Avenue and NE 39th Street. The site in question is currently vacant. To the north and to the east are planned single-family homes. To the south and to the west are existing single-family homes. West of the site is currently within the city limits of Vancouver. As I indicated south of the site is SE, no, NE 39th Street and there are single-family homes south of NE 39th.

We have reviewed the application based on the criterias for plan amendment and I'm sure that the Planning Commission have looked at our findings and if there's any site, I will -- the last time I was here arguing for no change some of the recommendations that came before you, we believe and concluded that this site meets all the criteria for plan amendment and as such recommended approval. There were some issues that were raised on taking access from 39th. That access currently exist given the platting of the property. There may be some opportunity for the site to also take access from 162nd. The applicant may address that issue, but staff is recommending approval of this application. And I will answer questions that you may have for interest of time.

LEIN: Are there any questions from members of the Commission at this time?

SMITH: Yeah. I guess I can start it. Criterion 2, I think we talked about this a little bit last meeting, two of our highest priorities in the county are affordable housing or housing within the urban growth boundary, opportunities to build houses within the boundary and also family wage jobs, so here we're taking a piece that is ten acres of residential, they're building right now all the way around it, we have potential for 50 more homes, we constantly hear developers coming in and say, oh, my gosh, we can't find anything within the UBC, we have to do flag lots and this is just terribly onerous, here's wide open 50 spots, it just doesn't make a whole lot of sense to me to go commercial, especially when eight-tenths of a mile as opposed to their study QFC, they're talking about a grocery store, a drive-through bank, all of which are eight-tenths of a mile to the south and also to the north. They say it's over one mile but actually there's commercial on the south end of that, of that area that isn't developed yet so actually it's less than a mile to the north we have the same thing.

According to the criterion, new community commercial areas should generally be

between 5 and 10 acres or 20 acres, which this is, and spaced 2 to 4 miles from similar uses or zones, this isn't even a mile from other uses and zones. So I just, I guess, I have to ask staff why we're making such a huge exception from the criterion here?

ORJIAKO: I disagree with you, so with all due respect Criteria 2 says "the proponent shall demonstrate," and this is on Page 5 of the staff report, "that the designation is in conformance with the appropriate location criteria identified in the Plan." Yes, if you look at the criteria for community commercial, you are correct, generally it should be between 5 to 20 acres in size, it meets that criteria. Space 2 to 4 miles from similar uses or zone, yes, QFC is to the south. I didn't measure it but I'm sure if you do a one-mile radius or two-mile radius, I believe that QFC will fall in there. The closest C-3, and we're looking at C-3, the closest C-3 to this site is the new Heritage Place if I'm correct on SR-500 and 162nd, I don't see any other C-3 further to the north.

SMITH: QFC is eight-tenths of a mile to the south.

ORJIAKO: Okay. Within two to three-mile radius we looked at, I acknowledge that QFC is within one mile or less than one-mile radius. The closest other C-3 is the one on SR-500 and 162nd. Now does it meet the threshold of the population 10,000 to 20,000, not at this moment, but if again you take a three-mile radius, I don't know, this you have 220 single-family homes that will be within this site, it's not yet developed, 220 lots maybe 2.5, 2.69 persons per household, that's more than 600 or close to 700 residents right there, but within a mile you have an area that is growing and I believe that within two or three-mile radius you can get equally 10,000 to 20,000 easily.

Is it at a major intersection and another arterial, there is. I still stress that given the cases you saw last week or two weeks, this case meets the criteria and I will stop there.

SMITH: Okay. So we're willing to give up an opportunity for 50 homes within the urban growth boundary for another grocery store within a mile of two others plus another one that's going in on Ward Road and 162nd just a little further north? Okay.

ORJIAKO: Yeah. I think that the issue he's raising is not one that we ignored, but this site was considered as part of the PUD when it was approved, so I really believe that that issue may have already been considered.

SMITH: Okay. The Andersen Dairy portion that the City wanted for commercial which is just a quarter of a mile north of there, what zoning did that turn out to be?

ORJIAKO: I don't think that that site is included in the UGB that is being proposed. Sandra, can you put that up.

SMITH: Yeah, just north of there, just, oh, and the dairy.

ORJIAKO: It's probably proposed for urban reserve. I don't have the current proposed County --

TOWNE: Yeah, it's outside of the UGB.

ORJIAKO: It's outside of the UGB so I'm not -- I don't think that that site is proposed to come in. And if it's proposed to come in, it is likely to be urban reserve. I know that there was some discussion by this body to remove some of this site outside of the Vancouver proposed urban growth boundary, I recall that. So I cannot tell you that is in and if it's in, what it's proposed to be.

SMITH: Okay.

LEIN: Other questions of Oliver? Is there a representative of the applicant here?

FEICHTINGER: Good evening. Mark Feichtinger representing the Stickney family. Members of the Stickney family are also here this evening and I'll introduce some other experts who if you have some questions you can certainly direct them at them. The Stickney family concurs with the staff report of course. We've appeared here several times. The family wants to briefly update you on a couple of items since our last discussion and I'm -- there may be another member here who was not previously here. And perhaps you've not had a chance to read the most recent submission which was given to you I think the staff on Monday and it's in your file. The first slide if we could. Excuse me, Sandra.

TOWNE: Unfortunately these aren't showing up very well. The scale is -- I can't get it to --

FEICHTINGER: They're 8 and a half by 11 and it's not --

TOWNE: Yeah, but it's not going to show the lines.

FEICHTINGER: Okay. I understand. Well, we'll work around that. First, you recall this is about a ten-acre site and it was the last one within the Vancouver UGA which was a single lot, if you will, at the ten acre size in the commercial area, so everything else within the Vancouver UGA was much smaller, you had to put together a significant assemblages to put together a parcel like this. The developer's plan from the very beginning is an integrated development of residential and commercial. Since we last spoke this has been fully platted, utilities are in, roadways are in and homes are being erected. The next slide. Oh, we got it. Thank you. Orientation, swivel a little bit the -- maybe turn it to the right, let's see if that does it. I'm just trying to get a north orientation on it so that --

TOWNE: North. North, yeah, well, you won't see very much of it if I turn it that way.

FEICHTINGER: Okay. Well, that's fine, we can go back the other way, it's a lot better, Sandra, thanks. All the utilities and services necessary for the site have been sized and installed and stubbed to the facility, and anything that is not, and that includes stormwater which is integrated in the stormwater system for the entire residential area, and anything else is in the immediately adjoining roadways, there are, really, are no utility and service issues here. But this commercial site has been filled and leveled as

we indicated it would be with buildable soils. Covenants and declarations have been recorded to provide notices to the 220 members who will be joining that residential area advising them of potentially integrated development with commercial uses on this site and we've reserved easements for commercial use.

The next slide, please. To demonstrate another area of the element of the integration, again this is, can you try this one on the other way, Sandra, I'm sorry, it's just so disorienting not to be able to read what's on there.

TOWNE: North is up now.

FEICHTINGER: Right. This gives you a sense of how the pedestrian paths work to bring people from the surrounding areas into the commercial site. Sidewalks and pathways through the PUD area, it was designed for this purpose, traffic moderation has been designed to bring pedestrian access into the commercial piece and in addition to make sure that there's no sort of drive-by, that is, people trying to get into the commercial site through the residential area. If you look at the traffic scheme, you can see the efforts -- or traffic has been routed in such a way as to make that not a very desirable option.

The second item I wanted to address tonight really is transportation. The 162nd widening project which we discussed the last time is out for bid and scheduled for completion in 2005. You may recall from prior discussions that the County staff's view that concurrency issues in this area would be remediated substantially with that project. The Stickney family conveyed property for the widening of that property, including additional width to allow the large CPU power poles to be moved back to the east. There's a right driveway drop which Oliver mentioned along right here that you see on the left side of the property, that can only -- that's a right in, right out, and it's just the only point of clarification we have on the staff report. The County, or the agreement with the County is that that driveway drop is there but can only be utilized if a site plan approval is obtained to use that site. So it's provided for from an engineering perspective, but we still have the site plan review process to go through to use that access.

In addition, the family's conducted a significant traffic study even though it's really not required for your process and that's in your materials and it was submitted to the County's concurrency staff. The family asked that the traffic study assume a build-out substantially larger than anything that they're contemplating just to see what the scope of impact is in the surrounding area. The County concurrency staff has reviewed that work and says that the methodology is acceptable, and this slide shows the significant results, I just wanted to leave it up there for a moment and highlight one or two items. One, a worse case scenario was selected and it shows that the actual site plan will really have lesser impact. Because of the community nature of the uses here and its orientation to other properties, it's localized and confined traffic impact. We are not dealing with impacts to the Mill Plain corridor. These are mitigatable traffic impacts in the immediate vicinity of the property. In terms of actual running it through the concurrency model, that will wait of course until we get through site plan review and

presented actual build-out and more refined analysis for a traffic perspective, but the bottom line is the methodology is accepted, this is largely local traffic issues, not major impacts on 162nd or Mill, certainly no impacts on Mill Plain and mitigatable through a site plan review process.

Let's move on to the next item if we may. Although it's not required, the staff has generally advised you that at this stage because you're doing a balancing around the county and a lot of other things that market studies are not required. Nonetheless we did that. The family agreed to kind of look at this question. And this slide really shows you the conclusions of that report which were prepared by Eric Hovee who is here this evening to answer any questions that you may have on that point. Incidentally, on traffic, Frank Charbonneau of Charbonneau Engineering is in the audience with us and if you should have any questions of him, he's prepared to answer any questions you may have. Eric's conclusion essentially that this area is underserved and will meet the criteria fairly rapidly in terms of serving people in the area. If you look at a one-mile radius we will be at the 10,000 population threshold or very quickly, a matter by the time this gets built out. A larger two mile trading area will have -- which has about 28,000 residents now within two miles will grow to nearly 40,000 within a relatively short period. And the conclusion is there really are no alternative sites, Mr. Smith. I drove and it was one mile, but I'll defer to your (inaudible) --

SMITH: I've got a brand-new truck, it's right on.

FEICHTINGER: -- but it's -- that's why I don't -- when I drove it it was over one and I think the spacial area map show over one but --

SMITH: To QFC?

FEICHTINGER: -- I'd defer to whatever it is. Yeah --

SMITH: To QFC.

FEICHTINGER: -- to QFC.

SMITH: Well, you must have gone from the middle of your thing over to the corner.

FEICHTINGER: Well, whatever. Within the larger two to three mile areas there are vacant sites, but none that are significant enough to create neighborhood commercial centers that are really usable or functional perhaps for grocery, et cetera. And so Eric's conclusion, it's in your materials, is a study showing this area is underserved generally, particularly for those people who want to walk, use alternative form of transportation or keep their trips shorter. If there are any questions on that, again, Eric's available to answer them.

The last item I wanted to address tonight is that the family asked that there be another neighborhood meeting and the first one was conducted in connection with the subdivision process. Those questions were -- that was a well-attended meeting, there

were a couple of changes in the final plan as a result of that discussion. There was essentially no opposition. One comment at the subdivision approval process. Erin Toman from the McKay & Sposito is here tonight to address any questions about the neighborhood meetings. And a second meeting was held in connection with the rezone, that occurred in the first week of June. About eight residents attended. Frank Charbonneau was there to answer traffic issues. The predominant question that night was were the types of uses that could go onto this site, the concern about what will they be and that sort of thing. At this stage it's rezoning, it's very difficult to get define with a pencil, but C-3 does have a list of potential uses and the commitment for the family and for the future development of this site is that a -- the third neighborhood meeting at the time that site plan review is contemplated. Clearly this is a long process. The site plan review realistically couldn't even initiate until next year getting through all this approval process, so there will be a third meeting and of course opportunities to interact with staff with regard to potential uses on the site when we get to that point.

Coming back around I -- the project has been discussed with the City of Vancouver and although it's not within their jurisdiction it soon may be and there have been no objections voiced by the long-range planning staff or others to either the staff or to us with regard to this prospect. We anticipate annexation would occur, this is we understand the highest priority annexation area for the City or first priority will, so we expect an annexation to occur relatively quickly. Our letter to you outlines many of the policies and there are 20 or so that this seems to align with wrote very well. It's hard to redraw the map of Clark County and put commercial exactly where you want it to be. We all understand that's a true challenge here and the objective is really to determine what you want in the future here. Do you want places that people have relatively short trips to for groceries and those kinds of uses. Do you want to be able to walk, ride bikes, take buses. It's a challenge to figure out where to do this, but this site seems to align very well with all 20 of those policies.

On the issue of removal from residential, it's a balancing act. Who could disagree that we are removing some residential from the inventory. Initially the family had an opportunity to build at a lesser density than what you have on those other 220 lots. A PUD process was used to increase density. Obviously there are financial reasons to do that, but it also met the goals of the County in trying to get more people into that site which it essentially achieved. It did that while still trying to create a sense of neighborhood. You have paths throughout the area, you have streets which are softer and quieter, you have a sense of that this community works together. And so although I understand the question raised by Mr. Smith, I think the bigger question is how do you want development to occur in the future, do you want commercial relatively close to large neighborhoods and several neighborhoods. In this case, again within a two-mile radius we are talking nearly 40,000 people in a relatively short period of time; within a one-mile radius we'll be at 9,000 within about five years or less, just running it out on a linear fashion.

So if there are any further questions, I've submitted to the record, Mr. Chairman, prior materials since this is a public hearing that we've discussed with you, but wanted to make sure they were in your record, you've seen them all. I'm not sure they're in this

particular binder, but in the prior binders on discussions here, and obviously we'd like time to respond to any questions you may have or questions that come from the audience. Thank you.

LEIN: Any questions of Mark?

SMITH: Well, I guess I have a question. This future huge build-out we're talking about, I look at a mile from this corner and the only place I see that's buildable that isn't built out is the 50 lots we're not going to build down in the corner. This is on the -- the one to the right is under the BPA lines and the rest of that is floodplain, wetland and across the street and to the north is light industrial, the head of Burnt Bridge Creek, I'm at a loss as to where we're going to put more buildings within a mile, houses within a mile of this intersection.

FEICHTINGER: The trade areas is clearly, but, you know, out to one mile but also two miles, I mean you look at that radius and, yes, there is a few opportunities for more density in that area. In addition, the objective of this site is really to avoid traffic moving all the way up to 162nd and that intersection, this solves that a little bit, it keeps those people a little bit closer nested in with shorter trip traffic instead of going up and, you know, challenging the problem up north that you already have. The projections, Eric Hovee is here to address the question of the population projections, but those numbers have been generally provided by County staff, demographic information and information that he has, and as the report indicates we are talking about 9,000 relatively shortly within the one-mile radius and a two-mile radius hitting 40,000 within the plan projected time frame. We may not want that to be, but I'm just indicating to you that's what the demographics clearly indicate and a sound basis for the analysis.

SMITH: I do have a question for Eric. They're talking about Clark County being underserved and in an example of it being underserved is that all this money is being spent in Oregon rather than Portland (sic), it seems to me that that money's being spent in Oregon because there's no taxes in Oregon, no sales tax, the proposed things here, grocery store which isn't taxed here, gas station, stop and shop, those aren't things that people are going to Oregon for, I have a hard time understanding how this development would increase the buying, the tax revenue developed by Clark County unless it's a big box place and that's -- then it would be possible I suppose.

HOVEE: Yeah, I -- and just for the record, Eric Hovee, Economic Consultant. There really are two reasons that people go across the river to shop; one is clearly the tax differential and there are certain items for which it's going to be difficult to recapture that, although I think we're, I think we're now finding that as more retail starts to come into Clark County, even larger format retail, that there are opportunities to begin to reduce that sales leakage and the tax differential makes less of a difference I think as we see frankly more, more and more congestion in the region as people have placed value on those trips, so I think there's the ability to recapture that.

This particular center, of course, is not aimed to any large big box uses, it's primarily neighborhood and convenience oriented, so the primary intent would be to serve those

demands. The from our -- our analysis the area is even for that day-to-day convenience commercial activity is somewhat underserved today, it is going to be more underserved with the population growth in the future. Our, the, we used the -- by the way, I would just mention we used the GIS information from Clark County with the GMA projections and we end up with about 8,000 population in the one-mile trade area now, 11,270 in the year 2020, that developed straight line you'd have about 10,000 by around 2010, most likely you watch across that threshold earlier because a lot of that development will tend to happen towards the front end of that. But you look into the three-mile trade area, for example, there are currently 47,000 people living within three miles and that's projected to increase to 69,000.

SMITH: I can agree with the three mile, I think there's real potential within three miles. Within one mile I see very little, but, okay.

LEIN: Any other questions of Mr. Hovee?

HOVEE: Thank you.

LEIN: Thank you. Mark, was there anybody else that you had in terms of presentation before I get into the sign-up list?

FEICHTINGER: I think they'll all reply in case someone had some questions.

PUBLIC TESTIMONY

LEIN: Okay. Thank you. I'll go down the sign-up list. Janet Stickney Bradley, do you want to testify?

STICKNEY-BRADLEY: No, I signed up by mistake, I'm family.

FEICHTINGER: Members of the family are here.

LEIN: Okay. Well, as long as you're signed up I'll give you the opportunity. Erin Toman.

TOMAN: No.

LEIN: Just a consultant. Julie Stickney-Mueler.

STICKNEY-MUELER: No, thank you.

LEIN: Pat Graber.

GRABER: Yes, I would like to talk.

LEIN: Please. If you would state your name and address for the record, please.

GRABER: My name is Patricia Graber and my address is 16309 NE 39th Street, and I have lived in the area forever and ever and all the houses were built up around me, so I'm pretty familiar with the area, but I do have a couple of questions that I would like to ask. First of all, there was a slide that was just put up and the slide was showing the proposed intersection or driveways going in and out of the development. Could you put that slide up again, please. If I'm understanding correctly, this is a proposal and I can understand the driveway going in and out of 162nd, but the one to the east that is proposed, if I'm reading the map correctly that's the new street that they are just now putting in. That street is, I'm not good in footage so, it's fairly close to my driveway and I have a concern if they're putting in a major Fred Meyer's or whatever it may be, I'm assuming traffic is going to go out that other driveway. And if it goes out that other driveway to the east, it's either going to go north around the loop and onto 162nd and go through residential or it's going to go to the south.

Well, if it's going to the south, I feel that there's a lot of concern with the traffic. I don't know what the traffic count is going to be, but traffic right now on 39th Street, and the new people haven't even moved into the homes directly across the street from me, but at 8:00 in the morning, 2:30 in the afternoon, the school buses are there, and in the evening time traffic is backed up from 39th Street and 162nd well passed that new street that is just in. So if there is going to be a huge development, where are these cars going to go and are they going to widen 39th Street. I can't even get out of my driveway right now in those time frames and I'm just the one person with a driveway right there, so it really doesn't affect other people except I'm concerned about the traffic flow on 39th Street. So that's one of my major concerns.

And I'm wondering what the traffic study is with a business versus housing. I'm assuming the business traffic flow is going to be a lot larger than a housing development.

SMITH: According to the report it will be nine times as much traffic.

GRABER: So where are those nine time cars going, you know, they're going to go right into an existing brand-new neighborhood or on 39th Street and I wonder how long it's been since there has been a traffic study out there, the people haven't even moved in, so that is a huge, huge concern of mine. Okay. Another I guess I do need to know, are there plans to widen 39th Street?

LEIN: I would imagine that as part of the application the owner will be at least having to do the north side half, half width development along 39th for the entire length of their property, so at least the north side will be done. And I'm not sure if the south side has sidewalks or anything on it or not.

GRABER: That's my house, no. The sidewalks are already in. And they did that when they moved the power poles and they widened 39th Street to a turning lane. So I can understand if they would put one more like a turning lane to go north, but that's still not going to take into consideration nine times more traffic if it's commercial. So if -- I guess

I'm concerned about the traffic study and I'm concerned about the development, if it's going to be commercial versus the homes. Okay.

LEIN: Okay. Thank you.

GRABER: Thank you.

LEIN: Any questions from members of the Commission? Becky Witt or Writl.

WRITT: It's Witt and I'll let Mary talk on the same area.

LEIN: Okay. Mary Jacob.

JACOB: I have some pretty pictures but I have to apologize they smeared, the ink smears, so thank you. My name is Mary Jacob, 4012 NE 171st Avenue in Stoney Meadows. We've followed this from the first development and as you can see here I went out today with my car and measured off the miles too, we think this should remain a residential area. There are many, many, too many, services already within two miles of our area, several vacancies in some of the retail establishments that are already within two miles. We -- goodness -- we would really prefer that, that the County plan, the sound of it is that it's to be residential. And this is certainly not going to provide family wage jobs. I don't know how many of you have lived in this area for a long time or how many of you might be familiar with a place called Beaverton, well, I used to live and work in Beaverton and that's one of the reasons I moved over here was to get away from strip mall world, it's very unattractive after a while, it doesn't maintain its appearance, it doesn't maintain its quality, it -- can this be turned down or something.

DELEISSEGUES: I think if you would --

LEIN: If you step up to it, they will probably take care of it in the back.

DELEISSEGUES: Well, I think that other microphone on the staff table is pointed, yeah, that one is probably the feedback.

JACOB: Oh, we're getting feedback. Oh, thank you.

DELEISSEGUES: Okay. Now you're good.

JACOB: Anyway, I've come from Beaverton and East Clark County with its high tech development and its retail development and more houses than you can even begin to imagine going in as fast as this, they can screw together prefab walls, is beginning to resemble a place that a whole lot of people wanted to get out of. It's -- it just doesn't fit. It doesn't fit with the residential plan, it doesn't fit with the appearance of a desirable neighborhood, the property values are going to be affected, the security is going to be affected, the litter is going to build up, we're going to have -- we already have more security issues because we've brought more of the kind of people in that are going to be going to fast-food and things just litter and stuff builds up and people start roaming

through the neighborhoods around there. It isn't an attractive residential area to keep adding strip malls all the way from Mill Plain to Ward Road which it sounds like is going to happen.

So we very strongly reject the idea that this should be commercial at all. We have enough commercial. As you can see here the Safeway is one mile from 39th. There is a two and a half acre parcel I believe at NE 28th Street that has been approved for commercial, that's a half mile. 18th Street where QFC and the bank and the gas stations and all that other stuff is, is it point, point nine, it's about one mile. To 1st Street is two miles exactly. Now when QFC went in the Thriftway that had been there for a long time serving the community with very loyal customers had to close because it was too much competition for them. So we have a Safeway, a QFC, an Albertson's, a Fred Meyer's, all within three miles. Thriftway shut down already because it couldn't support that much within two miles. Mill Plain is only two and a half miles away, I can't even begin to imagine a service you couldn't find on Mill Plain that you needed that is already within reasonable walking distance. So the -- these studies of an underserved needs doesn't make any sense to me at all. We have overserved needs in fact. So I think the underserved needs is the Stickneys bank account perhaps rather than the needs of the community.

I hate to say it that way, but I don't see that we have these kinds of needs on this corner here. The residential building opportunities are maxed out as Mr. Smith had mentioned with this corner being developed, there really isn't any other ground left around this area that, the Heritage neighborhood, all the ones to the west are completely full, there isn't going to be the kind of growth in residential that they're talking about, there's no room left unless they are out in the wetlands and the swamp which we have seen building permits being issued for places that people shouldn't build, but we don't see this kind of residential growth that they're talking about. The traffic is going to be a huge problem. It already is. 39th is not planned for development or improvement or widening beyond the development which is the boundary of the BPA easement at the power lines, there is nothing on the County plans in the foreseeable future. The developer had to widen 39th and 162nd to their boundaries as part of the residential development permit, it is not a benefit to the commercial, they already have had to do that to get the residential approved, so it's not like out of the goodness of their hearts they're going to do it for this, it already had to happen.

I also have to apologize. I had a nice thing written up to leave with all of you and I left it on my printer. I have another slide there, if you'd put up the other slide, please. And it has to go up and down, but we can kind of get most of it. I went up and down 162nd a couple of weeks ago for the other meeting and I counted all the businesses on each developed corner. I do have a copy of these, copies of these I will leave with you. You can see we have within, this is only down to 1st Street, I didn't go to Mill Plain because there you can find everything, from Fourth Plain to 1st Street we have two dry cleaners, we have four hair salons or barbers, we have seven nail salons and tanning parlors, we have three postal and shipping services, we have three movie rentals, we have four gas stations, we have three auto repair or auto parts places, we have three hardware or paint stores, we have four mini-marts, we have two supermarkets, we have one

drugstore, we have five fast-food, we have five pizza restaurants, we have four Mexican restaurants, we have only one tavern, we have a shortage there, folks, if that's what you want, we have five other restaurants, we have two ice cream parlors, we have eight banks, financial, insurance professional services, and by "professional" I mean like CPA's and things like that, we have seven medical, dental, vet, eye doctor types of offices, recreation retail we have five, and I included the, what do you call it, the golf, where you hit the golf balls place, nineteen other miscellaneous retail, home stores, gift stores, florists, et cetera, hobby shops, those kinds of things, photo shops, four coffee places and it fell off the edge down there, but as of now there are three vacancies, including one very large one where the art gallery thing was down by QFC.

There have been some recurring vacancies, that is telling me that not only are the needs not underserved, they're overserved and that these types of retail businesses are already saturated within this area. We have very few new homes going in and if we can't support what's already there, and I understand that on NE 28th Street two and a half acres has already been rezoned and approved, so that's only a half mile from us, NE 23rd Street there's a little plot there with a sign in it that says approved for a convenient store, so we're going to have another little mini-mart type store already there, I just can't see the need. And not only can I not see the need, I think it's a very detracting thing for a nice neighborhood like we have to increase the litter, the noise, the security problems, the everything that goes along with this. You really don't want to live in Beaverton, folks, trust me.

It seems like I had something else on the stuff I left at home. Oh, my only other comment on the thing I wrote up at home was this C-3 doesn't seem to be all that restrictive and it seems like we might have the opportunities here under this and if this is approved, we would very much be interested in which we can do to have input on restricting the types of things that are sited here later and who was going to have the authority to approve those, because down at 1st Avenue you have such fine retail establishments like Payday Loans, Mary Jane's House of Glass where you can all go buy your bong that you needed and the x-rated lingerie store, and those are all qualified under C-3 and that's just not the kind of thing we want in this nice residential neighborhood. So we oppose this on many levels but mainly because we got plenty of stores there already. Thank you.

LEIN: Are there any questions of Ms. Jacob? Thank you very much. Albert Griggs.

GRIGGS: I'll try to keep mine brief here. My name is Albert Griggs. I reside at 4220 NE 171st Avenue in Vancouver, and that is also in Stoney Meadows. And I'd like to express my views here in opposition to the rezone primarily due to the increased traffic congestion on NE 39th Street resulting from this project which we view as of questionable value to the surrounding residential areas. But in general east/west traffic flow all along the 164th Avenue corridor is already impacted at most intersections. And one example that stands out as a corollary to this project is at the intersection of SE 1st Street and 164th. The customers at these commercial areas to the east of 164th are usually bottle-necked from exiting the shopping centers on both sides of 1st Street and in both directions east and west and this is resulting from the traffic backup from the

antiquated traffic signal system we have along 164th and it gets even worse the farther north you go on 162nd.

And the problem is the long wait time you have for the east/west traffic to be able to move, and especially if you're in a left-turn lane, and this causes backups extending farther and farther from the intersection and blocking the egress from driveways and entrances and exits to the commercial centers. And we already have this problem on NE 39th and 162nd and that's not even having the traffic yet from the 220 new homes there. The homes just south of the parcel, and I think the lady just talked about it, there are two driveways there not 200 feet from the intersection of 162nd. They probably have problems now trying to get out of their driveway at certain times of the day and all residents in the area would be adversely affected with the addition of this commercial center on the corner. The road widening project for NE 162nd is just now getting started which is north of 39th and out to Fourth Plain is badly needed and certainly overdue and this is the result of the rapid development of residential areas around and north of Fourth Plain. The same rapid development is going on to the east along NE Edmunds which is kind of an extension to the east of NE 39th and this is placing heavy usage on NE 39th to 162nd Avenue. This proposed rezone is just going to result in more traffic impediment along 39th as well as 162nd as the traffic has to slow down for the ingress and egress of to the commercial center.

And as mentioned by Ms. Jacob, there isn't a lot of desirable businesses that we don't already have in a close proximity to this location. And we certainly don't need the undesirable types that will only increase our security, crime and area of deterioration problems. So in summary I see no need for a community commercial development in this residential area and I hope some other use for the land can be identified that will provide the owner with the same financial gains that he will accrue from this project. But let's give our infrastructure planners a chance to catch up with what's already needed before we add more problems to an already overloaded road system in East County. And I would like to thank you all for your time that you've allowed me to express my views.

LEIN: Are there any questions of Mr. Griggs? Thank you. Ruth Adams.

ADAMS: My name is Ruth Adams. I live at 3809 NE 163rd Court which is directly south. My backyard, if I could use your pointer, is right off of 39th Street, I'm right next, yeah, one more over to the, there, that's my backyard, we have no sound wall protection whatsoever. The three houses on 39th Street all the way down 162nd to NE 34th Street there's no sound wall protection for us. If you're going to increase the traffic nine times what it is now, I just don't know what to say. It's, it's horrible as it is now. There -- it's just insane. I don't understand what the planners are thinking, why. We also need -- if you're going to turn this into retail, please give us at least a right-hand turn lane, 39th Street is very, very overloaded now. Thank you for your time.

LEIN: Any questions of Ms. Adams? Thank you. Duane Adams.

ADAMS: No, thank you.

LEIN: Is there any other additional new testimony?

JACOB: May I say one more thing, please? Mary Jacob again. It was just brought to my attention that there is a major commercial development planned on 192nd and 18th Street. Is that -- can that be confirmed?

LEIN: 192nd and 18th?

TOWNE: No. No, that's Section 30.

MABREY: No, it would be at 1st Street.

JACOB: At 1st Street, okay. About 192nd which is still only a --

MABREY: Section 30.

LEIN: That would be Section 30. Is that what you're talking about?

MABREY: South of Section 30 there's a development planned for a Home Depot I believe on the --

LEIN: On the southwest corner?

MABREY: Southwest corner.

LEIN: Okay. Across from the schools.

JACOB: 192nd there by the schools, that is also not very far from this area and if there is another major commercial development going in there, that's still only a couple of miles away so we've got more than plenty then. Thank you.

LEIN: Thank you. Mr. Feichtinger.

FEICHTINGER: Frank Charbonneau would be happy to address some of the localized traffic issues, you want to step up, clearly it's understood that during site plan review process there will be significant work to do on 39th, that's always been assumed and discussed at the neighborhood meetings, but it's certainly been discussed with staff. Other turn lanes off of 39th, it's recognized to be an issue. Clearly when you're bringing any development into neighborhood areas questions about driveways surface and we certainly have that here. When you bring in more density in residential, you have those same questions. So in the context of the site plan review, clearly some addressing of how the site, the driveways work with those lots that are immediately on 39th from a long time ago will have to be dealt with. On market issues -- and I'm going to ask Frank to step up and just talk a little bit about the intersection flow here east/west and some of those issues that were just earlier raised.

On the market issue, clearly the market in some sense strives with the kinds of things that will be there. There's significant interest in this site from the sophisticated development community looking at those uses that people will want to have in this proximity to neighborhoods. We have not been approached by Fred Meyer and those kinds of folks, this is more to scale, that's clearly what's going to happen here. There's market segmentation, not everyone wants to go to QFC and the question of how much market you have as you start north and you look at the Fourth Plain intersection, how much do you want to draw people from down in this area up there or whether you want them to go down to Mill Plain.

So again, the analysis shows from a traffic perspective and from the economic analysis perspective that it's the local area that's going to service this center predominantly within about a two-mile radius. And if short trips and those kinds of things are desirable, which we think the plan really entices us to do, and if you want to have connections that make it possible to walk, we all have friends who live within walking distance of shopping centers or neighborhood centers and sort of wish we could do it, most of us have to get in our cars to do it, so the intention from the very beginning is to develop something that's fairly localized and usable. Frank, if you have a comment or two on the traffic matter.

CHARBONNEAU: Thanks, Mark. My name is Frank Charbonneau from Charbonneau Engineering and we performed kind of a preliminary analysis of traffic that would be output from a commercial center that is proposed on the ten acres and at this point we looked at a maximum density type facility, one that would never get any higher, and in all actuality when a specific site plan is advanced later on, the number of trips projected will be less than what we investigated so far.

Now this ratio of nine trips to one, I want to clarify a couple of things on that. First of all, it won't be that high and I don't want to leave the impression with anybody in the office or in the audience that we're not talking about increasing the nine times factor of traffic that you see on 162nd today and on 39th Street, what that ratio was referring to was how much traffic would increase compared to housing that could be built on the ten-acre site. I'm sure most of you understand that, but I think some people might have got that crossed a little bit. Well, in our maximum case study of the most density on the site we projected 400 trips in the p.m. peak hour or new generated trips. If we considered 50 houses could be built on there, and I'm not sure if the right answer is 50 or not, but if it was 50, those houses would generate approximately 50 trips in the p.m. peak hour. So your ratio there is eight to one so 400 to 50 is the ratio. Now again, the 400 is the worse and probably very unlikely situation and I think it's probably going to end up closer to a ratio of six to one, maybe five to one. It could be less, it could be a little more, but it's not going to be nine to one. Also, a commercial facility developed on there is actually going to save a few trips from the -- certainly the future residential housing that's going to be built adjacent to it from having to drive on those streets. They can stay on the local driveway system or be pedestrians and walk onto the system too, so there's some tradeoffs in there.

Probably the biggest consideration is, and from the comments that I've heard before

and tonight, is what in the world's going to happen to 162nd Avenue at 39th Street and how is 39th going to be impacted and what's it going to look like when all this development occurs. Well, there's a bottleneck there right now because 162nd Avenue is basically tapers from a five-lane section down to a two-lane section north of the area, there are some left-turn lanes at local intersections. The proposed improvements that's under contract now that will be completed probably by end of next summer, maybe a little before, when the County completes the 162nd project will make that five lanes, bike lanes, they'll have pullouts for bus lanes and sidewalks, so it's going to be a totally different system.

So what does that do to 39th and the traffic there, well, that signal is going to be upgraded, there will be additional lanes both on 162nd and when, when we do another analysis which will be reviewed by the County, probably more lanes would be placed on 39th Street also. So the queues that the neighbors experience today, even with additional traffic and the commercial center going in there, assuming it does, it's going to be a lot different and with additional lanes there's -- it's got to meet a level-of-service condition that will be reviewed and a traffic study. So if it's bad today, that's one thing, but the whole picture is going to change in the next year whether this goes in or not.

The County's in the process of updating their corridor model 162nd and when we get our final trip count from a specific site plan into a traffic study form, those trips will be placed into their model system and an evaluation made to determine that it meets the standards and whatever it takes to meet those standards for traffic flow both on 162nd and the side streets, 39th is one of them, will have to be a condition and either additional transportation lanes or reconfiguration of the intersections or the level of development can be adjusted some, you know, limits on sizes and so forth, square footages which would in effect change the traffic loads projected on the commercial center. So any combination of that is going to have to be met by the model's updating and analysis of that system. So we're going to look, we're going to do a final traffic study, we'll get some numbers specific to the site plan, do analysis, levels-of-service, project the queues on these streets and have that reviewed by the County agency. It will be in their model system and they'll reconfirm everything and we'll go from there. So, you know, I'm real hopeful this is all going to work out and I feel pretty confident it will. Can I answer any questions?

LEIN: Mr. Charbonneau, do you happen to know under your calculations as maximum what the level-of-service on 39th would be?

CHARBONNEAU: What the level-of-service on 39th will be?

LEIN: Yes.

FEICHTINGER: With 162nd improvements.

CHARBONNEAU: I don't know at this time. But, you know, their minimum level would have to be D or better. And along the corridor I believe there's a speed based level-of-service of something like 23 miles an hour and that would be recalculated in the

new model.

LEIN: Okay. Thank you.

JACOB: Can I ask a question, please?

LEIN: Any other questions here? Okay.

FEICHTINGER: We're available if you have any further questions. I just wanted to point out that most of the people here that have concerns are either to the east of the project in the larger subdivision to the right or immediately on 39th where clearly some significant addressing of traffic will flow out of the 162nd improvement and site plan review. Clearly we did not have many comments at the neighborhood meeting or turnout with respect to everyone else who received notice of that neighborhood meeting or could have been here and the City of Vancouver could benefit from something this close. So our effort is to work with the neighborhood as we go through the next phase. Clearly site plan review is where some of those issues get worked out more intensely and the residential development has put up walls, other kinds of things, in response to neighborhood issues and certainly will intend to do so the next round. Thank you for your support.

RETURN TO PLANNING COMMISSION

LEIN: Any final questions from members of the Commission? Okay. Thank you. Is there any -- there anyone who did not have the opportunity to testify? We don't want to get into a debate here. I know there's people who have concerns, but we're here to hear your testimony as opposed to ask you to have questions. So anyone else? Then we'll return to the Planning Commission. Questions of staff? Comments from members of the Commission?

SMITH: I think this is a little unusual. You look at QFC or you look at Safeway and where they're situated they border on almost no single-family dwellings at all. This one it looks like there may be as many as 50 or 60 single-family dwellings that are actually adjacent to this development, gas station, grocery store, lights on until 12:00 at night and the noise. And we've looked at a lot of these before, most of them are surrounded by other schools or some open space, I don't think we've ever had one like this that had actually 50 to 60 people actually adjacent to this new commercial area and the lack of people testimony, testifying, I think we'll hear from them later. Of course a lot of those houses aren't built yet so they'll come later during site review.

MOSS: But, Carey, those houses or the future residents of those houses I think will be given notice that this is going to happen. I think we heard some testimony from the applicant that that's written into their CC&Rs or otherwise they will be advised. And certainly during the development of that whole community this commercial was anticipated, so it isn't going to come as a surprise to them.

SMITH: That's true from the east and the north, but not the south or the west, yeah.

MOSS: Yes. Okay.

SMITH: So there will only be surprises for maybe 20 or 25 rather than 50 or 60.

DELEISSEGUES: We've got a couple more proposals tonight to talk about where the staff recommended denial and the recommendation is based mainly on the fact that there's no need for additional commercial development, and it doesn't seem to me that this is a whole lot different than the ones that you've recommended denial for that are coming up. And to me it's very inconsistent. I know that the Highway 99 has got traffic problems, but so does 162nd. And I agree with the east/west traffic in this area is terrible and it's there are a number of -- on 28th Street a high school down there that generates traffic that backups four or five blocks during certain times of the day. And I don't know when these traffic improvements are scheduled for on 162nd, but I know the County doesn't have a lot of money either to do a lot of work on infrastructure improvement. There's a lot of areas in the County that need it badly and I don't know if staff knows or not when the improvements are scheduled for this arterial.

ORJIAKO: Again Oliver Orjiako. On Page 4 of the transportation analysis, Page 2 actually, it says that NE Avenue is on the six-year transportation improvement program and scheduled for improvement between NE 39th Street and Ward Road for spring/summer 2004. And it goes on to say "the plan improvement will increase current capacity in this roadway section." That's something that we're going to follow as we go through the development process, but that's what we currently -- that's the schedule that we are on.

DELEISSEGUES: The spring of 2004?

ORJIAKO: Summer.

LEIN: Spring/summer.

ORJIAKO: Spring/summer.

FEICHTINGER: Commencement of the spring.

DELEISSEGUES: You better hurry.

MOSS: You can't get much quicker than that, Dick.

DELEISSEGUES: No. I don't see anything on Ward Road and that was scheduled for 2000 so I don't know about their scheduling.

SMITH: Well, a couple of weeks ago we took several of these and we decided that AO I believe it was, a business park type zoning, would be more appropriate. Right now we -- they're building business park type establishments up on Tech. What do they --

the technical center up there and they're filling up as fast as they can build them, it would be a lot less strain on the neighborhood, maybe that's something we could consider for this one as well as opposed to C-3.

LEIN: Are there any other questions of staff? Any other comments?

DELEISSEGUES: I just don't think the applicant's made a very convincing argument that there's a need for additional commercial development in this area. There may be some day, but I think the timing is really bad right now, not only from the fact that there's a significant amount of commercial opportunity there now or services provided there now, plus the road system in there is not good. I think that Carey might have a good suggestion there that, but keeping it residential would be more probably four homes to the acre with the infrastructure rather than 60. So I don't think the traffic generated by residential development in there would be anything near the amount proposed for the commercial development and that's my feeling.

MOSS: Well, I just drew the opposite conclusion, I thought the applicant did a pretty good job of explaining why additional commercial was needed in this area with the growth that's expected within a two-mile radius. I know that the roads in this area are bad, I find myself getting caught every time I drive this and that lane drop there, and I'm a slow learner, but that is scheduled for improvement right away, that that will be widened to the north. I know there's a considerable amount of development that already exists over to the west of 162nd and there's virtually nothing to serve that development now. It seems to me that this is a fairly logical place for a commercial development because of the crossroads here and because of the lack of other facilities.

And I know that QFC is down the street about a mile, but certainly with a build-out that's going to approach 40,000 within a two-mile radius, it seems to me that that this is a logical place. I will say I want to comment, Carey, this is the first time that I've seen you be an advocate for increased residential development. I'll have to write that one on the wall.

SMITH: It was Sonja's chocolate chip cookies that got me going.

MOSS: Must have been.

DELEISSEGUES: I think I was much concerned about the east/west traffic pattern and problems as I am about north/south though. And I don't see any -- is there anything scheduled for improvement on any of the east/west collectors?

ORJIAKO: Not that we know of. Not that I know of.

LEIN: I think the only increases have been on the west side is where the development has occurred and like Lonnie says, there's a lot of that area over there that hasn't -- isn't really truly served by any other commercial unless you go out to 162nd to get to it. But you're right, that is a terrible one until that intersection gets improved, it's going to cause all sorts of problems. I think that the applicant in their development review is going to

have to look very seriously at whether they have right-turn lanes, left-turn lanes, just exactly the number of lanes that on 39th where it joins 162nd, that's fairly typical and they'll be mandated to participate in the signalization change as well as the traffic improvements. I think that myself, I agree with Lonnie from the standpoint that, you know, we hear a lot of applicants come in here without having done a market study, without having done some of the research that they've needed to do with the community that lives around them, and I think that this particular applicant is taking the time and effort to hire some consultants that really show that there truly may be a need in this area. I agree with Carey from the standpoint there's a lot of wetlands to the north that aren't going to be developable and that one-mile radius may not be the impetus of where the people are going to be coming from, it may be the two depending upon what comes out here. So I don't think it's a bad situation with itself. Any other comments? Entertain a motion.

MOSS: Well, I'll throw one out there. I **MOVE** to forward this on to the Board of County Commissioners with a recommendation for approval.

RUPLEY: Second.

LEIN: Is there a second?

RUPLEY: **Second.**

LEIN: There's a second to it. Any further discussion on the motion? Could we have roll call, please.

ROLL CALL VOTE

MOSS:	AYE
SMITH:	NO
RUPLEY:	AYE
DELEISSEGUES:	NO
LEIN:	AYE

LEIN: Be forwarded on to the Board of County Commissioners for their review and discussion. Thank you very much for all the public testimony, we appreciate that very much. We'd ask that for those of you who are leaving, and I consider there will probably be a few of you, that you step outside if you're going to have any conversations, please, so we can continue with this hearing. Appreciate it very much. Ms. Anderson, can we continue on with the next case, please.

PUBLIC HEARING ITEMS & PLANNING COMMISSION ACTION, continued

D2001-017 (Collins, Larry) The property owner is seeking to redesignate and rezone parcels 098826-010, 098826-130, 098826-125, 098826-020, 098826-

030, 098826-040, for approximately 1.2 acres from Urban Medium (R-18) Office Park (OC) located at NE 72nd Street and NE 12th Avenue. **Staff contact Colete Anderson 360-397-2375 ext. 4516.**

ANDERSON: Good evening. Colete Anderson, Long-Range Planning, Clark County. The next applicant this evening is Collins, et al, Docket D2001-017 behind Tab 25. The applicants are requesting a change to the comprehensive plan and zoning designation for five parcels totaling approximately 1.5 acres from urban medium designation with an R-18 zone to office campus with an office campus zone. The area around the various parcels to the north is manufactured housing zoned highway commercial. To the south are single-family residence zoned R-18. To the east is a five-acre parcel, single-family residential zoned R-18. And to the west is two vacant parcels zoned OR-18 which is used currently to store commercial and industrial vehicles.

Staff recommends this evening that the Planning Commission recommend denial for this application on the following findings: One, if approved this proposal would render the parcels south of the applicant's area, excuse me, if approved this proposal would render the parcels not developable as the OC designation requires a five-acre conglomerate or a 20,000-square foot parcel. What would happen if we were to go ahead and recommend approval for this is that of the three different owners, Mr. Collins has three parcels, if you were to link them together, he alone would have enough that would qualify under the office campus designation to develop, the others would not, their properties, parcel sizes, are below 9,000-square feet, that would cause an island of office commercial separated and surrounded by residential uses. If this were approved by the Commissioners or recommended from this group, then the residents to the south of the proponent's application would find it very difficult to travel between the office campus designation and it would also prevent their homes and area from redevelopment. And that's primarily our conclusions this evening.

LEIN: Is there any questions of Ms. Anderson? Is there a representative of the applicant, please?

HOWSLEY: Good evening, Mr. Chair, members of the Planning Commission, James Howsley, attorney for the applicant, Miller/Nash, 500 East Broadway, Suite 400, Vancouver, Washington 98660. I just want to briefly thank the staff for their presentation.

A little bit of background on this property. We had originally -- or on these properties, we had originally submitted a plan amendment rezone request to the County in August of 2000, so it's been approximately almost four years now, to go from urban medium to office campus. In October 2001 our office had received a letter from the County stating that there were essentially two options that we could go forward with. One was the at cost annual review which was still open at that time, and the second would be to proceed under the no cost review, the docket review, which we are currently in. Due to the cost associated with at cost our client elected to proceed with the no cost believing that a conclusion of this would occur at the end of 2002 and with the possibility of it dragging into 2003. Again, I said we're here almost four years later from when our

original request was submitted. During this period, staff, this body, and the Board of County Commissioners has entertained many amendments to both the zoning code and to the comprehensive plan policies which essentially have made it more difficult for this office campus request to proceed, primarily it now requires a five-acre minimum. As well we looked at doing some alternatives zoning there, but due to some other amendments, which I'll explain a little bit later, it would also be very difficult to do.

The intent, the intent of the -- of our client here is to develop a high quality professional office building primarily housing Larry Collins Construction which currently resides in some parcels there to the west. The current zoning of the properties it's under R-18 so it does contemplate a higher, higher density than exist there currently with the single-family residential uses. As well we have the urban medium R-18 to the east which would also have apartments. To the north there is a mobile home park but it does have commercial zoning so there's a potential for redevelopment to commercial there later. To the west of these properties again is the Collins Construction and several other commercial sites, and to the south there resides the R-30 zone which contemplates an urban high type of use, really dense apartments.

As I stated before, our original request we asked for office, office campus, and again since many of the planning policies have changed at the time. In a letter that I recently sent to staff that I'm not sure is in the record yet that I asked to be in the record, we had elected to amend our request and ask that the request have an underlying comprehensive plan designation of mixed use with the OR-18 being the implementing zone. At the time we believe that the OR-18 is consistent with the current R-18 that's on the site, but it would allow for the development of the professional offices, as well as if the rest of the properties to the south were to redevelop they could -- they would redevelop most likely at apartments or a higher density residential.

But after that letter and speaking with staff very closely it's my understanding that they're proposing to eliminate several zoning designations under the mixed use comprehensive plan designation, so essentially the only implementing zone under the mixed use comprehensive plan designation would be the MX zone, so hence we're kind of caught in a quandary here as to how to get to the applicant's original suggestion of developing this for offices. In the memorandum I prepared here for you today, you know, I suggested one way to do that would be to do a community commercial comp plan designation with CL zoning and, you know, we'd be willing to entertain some kind of concomitant agreement to limit the uses to the kinds that would be implemented under the OR-18 zone.

And just going back to some additional history, and I'm not sure that I made staff aware of this tonight, it's just something that I discovered today, back in March of 2002 we had actually also simultaneously had submitted a rezone application for these parcels to go to OR-18 because the urban medium allows the OR-18 zoning designation under it so all it would require was a rezone, and at the time of the pre-application conference report staff conveyed to us that, that we had appropriately and adequately addressed the criteria to go to R-18, so I'd like to submit that to you, Sandra.

So I guess, you know, I'm here before Planning Commission tonight first of all to, to have our, you know, our request go forward, but secondly also I guess to kind of ask for some guidance on how to proceed. Again, we've been in this process four years, it seems like the code has changed several times or is being contemplated to be changed that it kind of makes our original request moot, you know. In looking at it the OR-18 would probably be the most appropriate zone and would fit into the Board's suggested redevelopment of the Highway 99 area as a jobs corridor. That's kind of where we're at. So we'd be willing to entertain any questions and would like the ability to respond to any comments.

LEIN: Any questions of Mr. Howsley at this time?

DELEISSEGUES: Well, just one I guess. Have you had an opportunity to work with the staff and kind of get a recommendation from them as to what would be compatible, you know, with their planning and your use?

HOWSLEY: Well, I've had several conversations with staff to this point. We, given, given a lot of the changes to the plan, you know, eliminating the OR-18 zone from the mixed use comprehensive plan designation, it's a lot of these has made it really, really difficult to kind of come to some kind of an arrangement, but that's how I would state it.

TOWNE: Yeah, that's -- excuse me. Is that on? Sandra Towne. Can you hear me? The mixed he's -- James Howsley is correct that we do have an ordinance that's going forward that will change the mixed use comprehensive plan designations and the zones underneath it. The OR-18, at this point they can, the applicant could go forward with that as a rezone. And that's always been understood because it's an urban medium designation and they could come in for a rezone, so they wouldn't have to be going through this process if they went through the rezone because the docket and the annual review process is for comprehensive plan changes, rezones go through a rezone process and they don't go before you. So that's the choice of the applicant has been to try and work something else out instead of the OR-18.

HOWSLEY: And, you know, respectfully in response to that, you know, again this is kind of how much money our client has spent to this date. He's waited four years in this process to have them go out and, you know, proceed through a rezone application and spend, you know, the fees that are associated with that, plus, you know, my professional time, you know, it's just something that I ask you guys to consider.

LEIN: Any other questions of Mr. Howsley at this time? Thank you.

HOWSLEY: Thank you.

PUBLIC TESTIMONY

LEIN: Go down the sign-in sheet. Excuse me, Don Gregg.

GREGG: No, thank you.

LEIN: Wendy Gregg.

MRS. GREGG: No, thanks.

LEIN: Peggy Horne.

HORNE: No, thank you.

LEIN: James Lien.

LIEN: No, we're all here, we have one speaker.

LEIN: Okay. Barbara Coleman.

COLEMAN: Stacey's representing me.

LEIN: Okay. Corrie.

CORRIE: Nothing. (Can't read last name, using first name.)

LEIN: How about Stacey?

KINNAN: You have a winner.

DELEISSEGUES: Bingo.

KINNAN: Good evening. To expedite this a little bit and let everybody get home at hopefully a decent hour --

LEIN: No, it won't happen.

KINNAN: -- we chose to have one person tonight.

MOSS: Thanks, we appreciate that.

KINNAN: We have some pictures here.

LEIN: Could you --

DELEISSEGUES: Could we get your name and address, please.

KINNAN: Yeah, I'm sorry.

LEIN: Please.

KINNAN: My name is Stacey Kinnan and address is 7016 NE 12th Avenue.

LEIN: Thank you.

TOWNE: If you could hand that to the woman in the gray.

KINNAN: Could we put these up there. Will they go up?

TOWNE: They will.

KINNAN: Yeah, perfect. And they're numbered on the back so this, this will be really rapid. This whole thing should take about ten minutes, we're going to be really quick here because I'm going to read pretty much this thing so.

HOLLEY: Just don't forget I'm taking this down while you're talking so not too fast, please.

KINNAN: Yes, ma'am. Okay. These following statements are agreed upon by residents which are shown on the signature page of 12th Avenue and give testimony to our opposition of the rezoning of parcels 098826-010 dash 130 dash 125 dash 020 dash 030 and dash 040 from urban medium R-18 to office park OC.

The first item is neighborhood serenity. This is Photograph 1, we're going to look at Photographs 1 through 12. On Photographs 1 through 7, these first 7 here, 12th Avenue is a dead-end street affording its residents an oasis in Hazel Dell. The serenity of this neighborhood demonstrates and photos attached detailing the quiet street and park-like surroundings. Properties already adjacent to the Collins' land on 12th Avenue have been affected by the '99, 2000 attempts to utilize the Collins' land for his construction business. The land is located on a sloped hill and dirt was removed to try to level out the land, and you can see this on Photos 8 and 9, which is owned by Collins. This is 8 and the following one is 9. This is his property amongst our little oasis that he wants to turn into office.

This created a water runoff problem for properties on the southeast and southwest sides of the Collins' land, and those are Photos 10, 11 and 12, that has caused the problems with the water. You can see in front of the house right there, all these pictures are taken from the road, in front of the house right there it's a swampy mess every time it rains. And this is in front of another home, they've actually had to build a little berm up there to keep the water from crossing there, running across the street and into their front yard. And this is another picture of their front yard with a little different view of it. This problem was never corrected. And the fence dividing the Collins' land and the properties southeast is almost covered in dirt since no retaining wall was ever put up; as a result puddles up -- as a result water puddles up and drains like a river onto the properties on the lower part of the hill. If this land was commercialized, Mr. Collins could move his existing construction business onto his land on 12th Avenue which would, which could further deteriorate the properties surrounding it.

There's three things that we're really concerned with as property owners on

12th Avenue. One of them is lower property values that this would bring to us and our little community here, the esthetics of the street would be compromised, and pollution from the diesel and just by simply having a construction site, we're not talking a UPS place or something to that effect or normal office businesses, we're talking heavy equipments, dump trucks, Grade-Alls, everything to that effect that comes in and the other pictures here will show, and I think we've already moved into them, these are Photos 13 through 25, or excuse me, 13 through 22, and this one's safety. Currently children residing on 12th Avenue are free to ride their bikes and enjoy a peaceful environment. This is Larry Collins' place off of 72nd Avenue right now and this is a picture taken from the street, this is what we look at. Also several adults walk or run on the street while en route to their exercise destination. We have attached photos showing the width of the street as well as safety issues as they -- at the existing Collins business. This is their Grade-All you can see in that picture there and if, if you actually went back one photo there, please, in that picture there it wasn't -- there was a little puddle of water and you can see the oil sheen in it. If you got close enough to it, there's oil all over that place there and with the runoff we have on the hill at the current location of the property he wants to rezone, we would be dealing with that running across the public street on 12th Avenue and then down into our own homes and of course into the rivers and on and on. If commercialization were allowed we would not be able to enjoy the same freedom because, number one, heavy equipment moving up and down the street would create the safety hazard, a one lane dead-end, excuse me, a one lane dead-end street cannot support the increased traffic that will be created and environmental issues would arise.

The third point, the main point we have here, is the business sense. We do not want this commercialization allowed in this neighborhood because it does not make good business sense. There is plenty of vacant land and already -- land already zoned for commercial use along Highway 99 to utilize for business. These vacancies should be filled before infiltrating a peaceful neighborhood. Mr. Collins already owns a large office building on Highway 99 and 72nd Street which is rarely, if ever, full to capacity. And we've provided a list here that I will leave with you tonight of vacancies along Highway 99 with -- and we didn't do a mileage study, but I would say within a mile to a mile and a half maximum of this proposed zoning change.

We have one more set real quick here and this deals, this deals primarily with, those are numbered also, this deals primarily with the Larry O. Collins business and what we deal with on a constant basis. The following 14 photos are presented by some of the neighbors whose property and well-being will be affected if Larry Collins Construction Company request to rezone the affected parcels is approved by the Clark County Planning Commission at the public hearing tonight. Sets -- or set one which is Photos 1 through 7, the photos in set one are shots of construction yard that suggest that the company is not a very socially responsible business, and these photos show piles of lumber, tools and equipment in various locations in the yard that are highly visible to passerby, especially the neighborhood residents because the yard is not fenced. And this is a construction company that's been in business for numerous years, decades, and I think we'll see from these pictures that they're not socially responsible to protect children or the well-being of others or others properties.

Set two, Photos 8 through 11, the photos in set two are shots of the various pieces of equipment that are stored in the Larry Collins Construction Company yard. These heavy equipment vehicles move in and out of the yard on workdays. They pose a safety hazard to the regular flow of pedestrians, many of whom are children and adolescents who reside in the Rolling Creek Apartments at 72nd Street, NE 12th, 13th, excuse me, 13th Avenue and at the condominiums just east of the apartments. These pedestrians navigate NE 72nd Street every day passed the Larry Collins construction yard.

In set three, which are Photos 12 through 14, and this is the last set, the photos in set three further reinforce the safety hazard problem posed by the presence of Larry Collins Construction Company. These photos clearly show that Larry Collins Construction Company yard is not fenced. In fact the only fence that's visible in these photos are properties which are adjacent to the yard, consequently pedestrians, especially curious children, can easily wander into the yard to play among the piles of rubbish, tools and equipment and run the risk of being injured. This can be a more serious problem in the hours when the business is closed, especially in the summer when the children have more time on their hands to play since they're not in school and we're in that time right now.

These three sets of photos are just presented to show us what the Larry O. Collins standard of business is and to show you that here on 72nd Street, which is a fairly busy road, the upkeep of this place is not very esthetic, let alone safe for children. If we allow him to move this by being rezoned onto 12th Avenue where it's even farther out of the public view except for the residents on 12th Avenue, I can only imagine what it would look like at that point. In conclusion, together these photos suggest that a construction yard that of such Larry Collins Construction is not a good fit for the neighborhood, and they also suggest that their owners tend to be socially irresponsible. I thank you for providing your time and us be able to communicate to you and we hope that this is denied. Thank you.

LEIN: Any questions from members of the Commission? Thank you. One last one, David Horne.

HORNE: No.

LEIN: Is there anyone else wishing to testify for or against this application? Mr. Howsley, do you have any comments?

RETURN TO PLANNING COMMISSION

HOWSLEY: Just real briefly for a minute. Just briefly to respond to some of the neighbors' concerns. In fact you did see a neighboring site with some from -- some construction equipment on it, that's an existing nonconforming use that's there. Obviously any, any rezoning here would require a site plan process, no heavy

construction equipment would be, would be there, this would be basically professional offices.

LEIN: Any questions of Mr. Howsley?

DELEISSEGUES: Yeah, just one. Would the rezone request have any effect at all on this property that we're looking at?

HOWSLEY: Yes, actually it would. Again going back historically there's two, two small parcels there that we had gotten rezoned I believe back in 1999 and that's the pictures that you are seeing. Part of our overall vision for the property was to get these additional properties surrounding it to develop a more cohesive kind of development and project. Unfortunately due to the delay that we've experienced in this with this process, you know, here we are four years later.

RUPLEY: So can I ask the question then. The two parcels what you're saying is then you could have equipment on the ones you want to do now so that you would expand that?

HOWSLEY: No. I mean the equipment would be taken off-site and we would develop the whole, the whole -- all of the parcels together into a professional office.

LEIN: Lonnie, do you have a question?

MOSS: So the proposal is that the two existing parcels, the OR-18 parcels which are owned by Collins also, would become part of the development along with the rest of these?

HOWSLEY: Correct.

MOSS: And that can be done under OR-18 --

HOWSLEY: Correct.

MOSS: -- not necessarily office campus?

HOWSLEY: Correct. And again, you know, the OR-18, if it was applied to the new properties, you know, would not allow heavy construction equipment to be stored open.

MOSS: Right. Right.

HOWSLEY: The equipment that was there, again, was a part of a nonconforming use that dates back historically.

DELEISSEGUES: So if your request to rezone to OR-18 were denied, you probably wouldn't go ahead with the development and this equipment would stay where it is?

HOWSLEY: I can't answer that.

DELEISSEGUES: Well, would you go ahead with the proposal if the rezoning was denied to some other, R-18 for example?

HOWSLEY: I'm not sure I follow. If this proposal was denied I honestly cannot say whether my client would proceed with building offices on an existing OR site.

DELEISSEGUES: Okay. And did I understand staff to say that they would be okay with OR-18 or not? You would support that request or not?

TOWNE: OR-18 is merely a rezone and we didn't do a staff report on OR-18, we did a staff report on office campus. I can say that just office campus, any other use besides residential we felt like was incompatible with as the pictures you saw. The residents, it's a small residential lane and it would be quite incompatible is how -- is what we thought.

DELEISSEGUES: Okay. Thanks.

HOWSLEY: And if I may briefly respond to that. Again, the existing zone is R-18 so it does contemplate a higher, higher use than currently exists on the site.

LEIN: Thank you.

HOWSLEY: Thank you.

LEIN: Return it to the members of the Commission. Questions of staff? Comments?

MOSS: I have a question for Rich, I notice you back there in the audience. If this process were to start again, this obviously isn't the right vehicle to get to a zone change, but is there anything wrong with this from a legal viewpoint in this Board recommending a change to the zoning of this that really amounts to just a rezone and not a comp plan amendment?

LOWRY: Well, this Board can certainly recommend that a, although you're not, would not be the decision maker for a rezone, that you think it appropriate that the rezone receive consideration.

MOSS: Okay. Thanks.

LEIN: Other questions? Comments? Entertain a motion.

DELEISSEGUES: Yeah, I'd make a **MOTION** that we support the staff recommendation for denial.

RUPLEY: **Second.**

LEIN: Moved and seconded to support staff's recommendation for denial. Additional

comments?

MOSS: I certainly don't believe that the office campus designation for this property is an appropriate one. I find the -- find the OR-18 kind of intriguing because it seems to me that it allows the property to redevelop and may cure many of the complaints that the adjoining property owners have voiced tonight, but for a straight up or down vote, you know, I'm certainly not -- I don't want my vote here to be construed as the one that would be supportive of office campus.

LEIN: Okay. I think I hear that, you know, staff may want to work with Mr. Howsley on the OR-18 and between now and the time the County Commissioners have it. Okay. Could we have roll call, please.

ROLL CALL VOTE

MOSS: NO
SMITH: AYE
RUPLEY: AYE
DELEISSEGUES: AYE
LEIN: AYE

LEIN: Be forwarded on to the Board of County Commissioners. We are going to take a brief break here before we continue on with the next case.

(Pause in proceedings.)

PUBLIC HEARING ITEMS & PLANNING COMMISSION ACTION, continued

D2003-038A (Abruzzo) The property owner is seeking to redesignate and rezone parcel 147576-005 for approximately 3.15 acres from Urban Medium (R-18) and (R-22) to General Commercial (CL) located at 5820 NE 8th Court. Staff contact: **Colete Anderson 360-397-2375 ext. 4516.**

LEIN: We'd like to reconvene the hearing. We'd like to change here something real quick. Is there anybody in the audience on the Abruzzo case? Are you, Mr. Neill? Of course you are. Are you testifying against this?

NEILL: No.

LEIN: Okay. Could we quickly go through the Abruzzo?

DELEISSEGUES: What tab number?

LEIN: It is Tab Number 22.

DELEISSEGUES: Thank you.

ANDERSON: Docket Number D2003-038A, Abruzzo/Lockaway Storage. The applicant request to change the comprehensive plan --

TOWNE: You need to slow down a little bit.

ANDERSON: First too slow, then too fast. The applicant request a change that the comprehensive plan designation from urban medium with a two zones R-18 and R-22 to general commercial with a CL zone for approximately 3.15 acres. The site is currently built out as a mini storage facility and had a commercial zone prior to the 1994 comp plan. It is surrounded by other like uses. It's at a dead-end street and staff is recommending that the Planning Commission forward a recommendation of approval to return the zoning back to the way it was prior to the 1994 plan.

LEIN: Any questions of Ms. Anderson? Mr. Neill, do you have any comment?

NEILL: Just that I concur with the staff recommendation.

LEIN: Thank you. Anyone else wishing to testify?

MOSS: Yeah, I would. I'd like to say as Abruzzo's closest neighboring property owner that I have no objections.

DELEISSEGUES: It sounds pretty straightforward to me.

LEIN: I'll entertain a motion.

DELEISSEGUES: I **MOVE** that we recommend approval.

RUPLEY: **Second.**

LEIN: Moved and seconded. Any further discussion? Roll call, please.

ROLL CALL VOTE

MOSS:	AYE
SMITH:	AYE
RUPLEY:	AYE
DELEISSEGUES:	AYE
LEIN:	AYE

LEIN: Be forwarded on to the Board of County Commissioners. Thank you for your patience on our diversion here. The next one, then, is Lane Landmarks. Mr. Mabrey, please.

PUBLIC HEARING ITEMS & PLANNING COMMISSION ACTION, continued

D2004-135 (Lane Landmarks) The property owner is seeking to redesignate and rezone parcels 117973-000 and 117974-000 for approximately 1.25 acres from Urban High (R-30) to General Commercial (CH) located at 10311 Hwy 99. Staff contact: **Mike Mabrey 360-397-2375 ext. 4343.**

MABREY: Good evening, members of the Commission. For the record my name is Mike Mabrey, Long-Range Planning Staff. The item before you is Docket Item 2004-135, Lane Landmarks/Bliss Restaurant, and there's a minor correction to the information that is in the agenda. The size of the area that would be -- or the proposal is a plan amendment and zone change from urban high density residential with R-30 zoning to general commercial designation with highway commercial zoning, but the area is actually 2.03 acres, there are two parcels involved in this and two tax lots.

A very brief history of the site. It was developed prior to 1980. There is a 1980 site plan approval which was for the back building that expanded the development on the site. At the time that the '94 plan was adopted and subsequent zone changes were made to R-30 in the existing designation of urban high, one of these parcels, the smaller one, was zoned for apartments, it was A1; the larger parcel was zoned highway commercial. Since that rezone occurred there has not been a continuous commercial use on the site. The Calvary Church occupied the site from about March 1995 to January 2002, sorry, kind of quick. As a result the commercial use which was nonconforming had been abandoned and therefore the restaurant/bar business that's currently operating on the site is not permitted under the existing urban high residential zoning. Staff recommendation is for denial.

The basis for that is several findings. First, that this would reverse the attempt to break up the continuous pattern of strip commercial development on Highway 99. It was consciously done to intersperse that strip commercial pattern with high to medium density residential uses. This property was split zoned at the time. There was potential for it to redevelop. And frankly, the fact that there's a transit corridor adjacent to this site and an arterial street is equally valuable to high density residential development as it would be to commercial development. So approval would return to the existing commercial strip pattern and there is no demonstrated shortage of commercial land to serve this market area.

The existing building on the site could certainly and have been used for uses that are allowed within the R-30 zone. A church is allowed in an R-30 zone, as are clubs, lodges, private recreation facilities, public and private schools and commercial day-care facilities. Those are a few examples of uses to which the existing buildings could be put under the current zoning. I think that's pretty much the high points. Certainly commercial development tends to create much higher traffic potential as well. And there's a number of site planning issues which will probably end up being discussed as we go through this, but at this point I'll stop and let the proponent proceed.

LEIN: Any questions of staff at this time?

DELEISSEGUES: Well, I've got one question. You, hello, you said that it was an allowed use as a club; is that correct?

MABREY: Like private clubs or lodges, like an Elks Club, that's what that --

DELEISSEGUES: That's what I wondered.

MABREY: Right.

DELEISSEGUES: If they changed the name to Bliss Club instead of Bliss Restaurant, it wouldn't make any difference, would it?

MABREY: No. But if the Elks wanted to come in and use it and move off of their site on 78th Street, it might work.

LEIN: Okay. Any other questions? Is there a representative of the applicant here?

SELLERS: Good evening, Commissioners. My name is Jim Sellers, I'm an attorney. My office is at 415 East Mill Plain Boulevard in Vancouver. I represent the applicant Lane Landmark. I'm going to tell you a couple of things you're not going to like and I apologize for that, but they're nevertheless things that I have to bring up. The first is you will hear from my client, you will hear from two other attorneys and probably other people, one of the attorneys, Dave Nordeen, represents the restaurant which is but one of the tenants of this commercial center that my client owns, my client's a closely held family investment corporation and I have to state these objections at this time.

Mr. Nordeen will present to you documented evidence of where the Director of Community Development wrote that the Board of County Commissioners aren't going to approve this application. And he also has documents to show that he's been in direct communication with the Board of County Commissioners regarding the application, which of course undermines the fundamental fairness of this process, which I don't know that it exactly involves you, I don't know it does, but if I don't bring that up at this time, I waive it and that's why I'm bringing it up.

There's also a suggestion in the paperwork that the reason for this staff recommendation is racial profiling and you will see that, it will be presented to you. I'm not going to do it, Mr. Nordeen is going to do it, and we'll get to that all in time.

Moving on, I have a question and that is I haven't seen an exhibit list and I want to make sure the letter I wrote for this application is in the record and is in your packets.

MABREY: I don't think it is.

LEIN: I don't remember seeing it unless it was a previous packet.

SELLERS: I ask because there are so many funny things going on with this application,

I just wanted to make sure you saw it because it sets forth our position and I think it should be in the record and I would ask that it be added, it be furnished to the Commission and I wondered why it wasn't.

MABREY: His initial letter. Your initial letter on February 4th, if it isn't in the record, we can certainly put it there. I know that I cited several of the -- I cited the reasoning in there and responded to it so, but certainly we can put it into the record.

SELLERS: I'd appreciate that made available to you. As I indicated, I represent the owner of the property. This is a commercial center. It's been there for a long time. The property contains what's called the Old Winery which it's been my experience people in this community that have been here a long time are generally familiar with what is meant by the Old Winery out on Highway 99. This is a fully developed site. There was a site plan approved in either 1980, I thought it was '82, that shows the complete site. County staff reviewed it. My client is going to discuss it with you, discuss the history of the property so you understand that. There's a comment in the staff report that one of the parcels is zoned A1, not to our knowledge was it ever zoned A1, it was zoned commercial, as was the front parcel. The staff report also makes the comment that the restaurant/bar business that's on this site is not permitted in the CH zone. I don't know if that's a typo or not, but under the table of commercial uses in the CH zone this type of use is allowed clearly, it's not even, it's not even subject to fair debate. I don't know what, whether they meant in the medium density zone and wrote in the highway commercial zone in their staff report or what, but that's a -- that is one of many errors in the staff report.

It's kind of odd talking about a parcel like this that's fully developed with buildings intended for a particular purpose, that purpose being commercial, that is being measured against locational criteria that's applicable to new development. The Clark County comprehensive plan recognizes that there's strip development along Highway 99. It's one of the things that planners do not like and what the comprehensive plan exactly says about it is they don't want to continue the expansion of this strip development. Ladies and gentlemen, taking that strip development and pulling out a wedge of it to break it up when it's an existing commercial site for which the, by the way the owner had no actual notice that that application was brought before the County and approved until a matter of months ago, and forcing the owner to come back and make an application to get it rezoned to commercial is not adding to the strip center, that strip center's existed that way for years.

The staff admits that Goals 1, 2, 5 and 6 of your planning criteria are met by this application. It questions whether Goal 4 relating to transportation is met. I suggest to you that Goal 4 is met. I don't know whether it's in the record, but I've seen a report done by two police officers with the Clark County Sheriff that seems to suggest there's traffic problems. Of course traffic problems are generic. I mean if you go any place where there's urban development, there's traffic problems. Or perceived traffic problems. It's not to say that there's not traffic problems, cars are problems I don't care where they are and in what quantity.

We had prepared by CTS Engineers, I'm fairly certain you're familiar with CTS Engineers, Howard Stein is usually the fellow that appears for CTS Engineers which is a qualified traffic engineering firm that did a traffic analysis of and also a safety analysis of this site that you've been told will have a greater traffic impact with its currently developed use than it would with multi-family, and it responds to those issues and I'd like to give it to you at this time. There should be enough copies for each Commissioner.

LEIN: Mr. Sellers, I think you've left some stuff up here that you shouldn't.

SELLERS: That I didn't -- it wouldn't surprise me, I do it often. Thank you. Actually these are the zoning -- these are the district regulations of the commercial districts with a table on it that shows that this use is allowed in the CH zone contrary to the statement made in the staff report. If you turn to Page 2, excuse me, if you turn to page, yeah, Page 3 of the traffic study and you go to the paragraph that begins below the table on Page 3, it says "thus, the change in zoning designation from R-30 - High Density Residential to CH - Highway Commercial would result in a net decrease of new trips to the site by approximately 28 percent in total new average weekday vehicle trips on the adjacent transportation system with a slight decrease in new AM and PM peak hour trips." In other words, the commercial would have a lesser impact.

If you go down to where it says "SITE ACCESS," right below that it says "the section of Highway 99 in the vicinity of the Old Winery property is typical of strip development along major highways developed prior to the adoption of pedestrian/bicycle friendly design standard." And then if you go down to the last sentence, "while the lack of sidewalks limit movement of pedestrians, particularly across the bridge directly south of the site, the potential impact on operations and safety would be much greater, excuse me, the potential impact on operations and safety would be much greater on High Density Residential development which is a pedestrian oriented usage than it would be on the proposed Highway Commercial zoning, which is primarily vehicle oriented."

Turning the page, I just wanted to point out, I think it's been pointed out in the record, that there is a C-TRAN stop immediately in front of this restaurant. With respect to traffic safety at the bottom of Page 4, "crash data in the vicinity of NE Highway 99 and NE 104th Street was obtained for the last three years of available data, (2000 to 2003)." The last sentence, "this equates to an average annual accident rate of .53 accidents per million entering vehicles. This rate of reported accidents is typical of similar locations within Clark County."

If you turn the page to "CONCLUSIONS AND RECOMMENDATIONS" it repeats that the, the first one, that the impact from recognizing the existing commercial development on the property and the traffic from that would be less than if the property were developed with a high residential type of zoning that the staff has apparently recommended to 1994. With respect to the operation of the driveways, in other words the safety thing, the second recommendation and the third recommendation address that and basically involve striping. It's kind of ironic that those problems exist when you will not -- when my client speaks he will show you a copy of the approved site plan that

the County's traffic engineers no doubt reviewed when this site was approved in the first instance. So I suggest that the conclusion that Goal 4 has not being met is not accurate. Goal 4 has been met better than if this property were developed medium density.

One other -- two other points I wanted to make. If you look at the zoning map up there on the wall, all of the property to the south and north of this street on the same side of the street with the exception of this little wedge that was cut out where the property parcel is, no, no, it's above that, right there, everything around it north and south and across the street north and south is zoned commercial. There is a Supreme Court holding in this state, the basics is a matter of law, if property is zoned commercial on three sides, you got to turn it, change it to commercial. Why this occurred in 1994 I would suggest I'm generous to say it was an oversight. My client would have protested, he didn't know about it. There are requirements for legal notice that are not actually calculated to reach people that own property because they're published in the newspaper, if you don't happen to read it and catch it, you lose track of it, but my client didn't find out about this until a couple of months ago. Taking this one plug out which is an actual commercial development itself and zoning it R-30 makes no sense at all, particularly as you'll see from the photographs my client is going to show you properties across the street are zoned commercial and they're vacant, they aren't even developed.

I don't, I don't, I don't understand. I don't understand the staff recommendation except when you get to the documents that Mr. Nordeen is going to go through with you, one of the things that has generated the staff report is lobbying by the police because there's a perceived police problem associated with my client's tenant, the restaurant. If it were true that there is that kind of a problem, problems like that should be dealt with. You don't deal with problems like that by applying inappropriate zoning classifications to terminate the use, it just doesn't make any sense, there's other ways to deal with it. Not that we agree that problems exist in the way that the Sheriff has tried to portray, although, again, Mr. Nordeen is going to address that.

One of the goals on Page 1-1 of the plans, Goal Number 6, states that "property rights of landowners shall be protected from arbitrary and discriminatory actions." Rezoning this property to a medium density classification in 1994 was an arbitrary action. Countywide Policy 10.5 on Page 1-13 states, and I'm going to quote, "the County and the municipalities will demonstrate their commitment to the retention of those enterprises which have created the economic base of the county and promote their continued growth in a predictable environment which encourages job growth." There's 33 people that work at this site. The rezoning of this property in 1994, and I suggest that, and a refusal to zone it back now is not continued growth in a predictable environment.

Something like this is very unpredictable if you're a landowner who's made a substantial investment in a development of this type. The goal also says that the commitment is to the retention of those enterprises which have created the economic base of the county which this commercial development certainly qualifies as that type of an enterprise. Goal 10.1H requires the provision of orderly long-term commercial growth. Orderly long-term commercial growth is not without the owner actually knowing about taking an

entire commercial center and rezoning it to a nonconforming classification.

Among the more almost profane suggestions made by the staff is that the other uses allowed in the high density or the -- I don't remember if it was high or medium density designation that they applied to the property are somehow appropriate. Most of those are conditional uses. The only two conditional use cases I have are in Superior Court. The grant of conditional use is expensive, time consuming, and requires the exercise of considerable discretion and is the subject of considerable controversy. This property owner does have some right to have uses that they can use outright. I mean that is a disingenuous argument.

I think one of the things the Commission has to ask itself if it turns this rezone down, what does this property owner do exactly. We don't agree with the County staff position that the restaurant isn't a legal use and that the nonconforming use rights are not protected, but I think you have to ask yourself, well, what does he do. He's going to discuss with you the construction of this structure. It's not convertible to something else. I mean there's not a church going to come in there and buy that. Their approach to this thing is completely unrealistic and, frankly, I don't think you'd see the staff report that you've seen tonight but for the machinations of Mr. Rich Carson that Mr. Nordeen is going to go through a little later this evening. Do you have any questions before my client talks?

LEIN: Any questions of Mr. Sellers? Thank you.

SELLERS: Thank you.

BARTON: Good evening. My name is Colonel Barton, reside at 10400 NE 72nd Avenue, I have some documents for you. I appreciate the opportunity to address the Board members tonight. We have supplied in depth we feel is our viewpoint on the property. We've worked hard with this property. We've owned it since the mid '80s. I've been in the area for over four decades. I've watched Clark County grow. I've owned a construction supply company and helped many developers in the area. We ourselves have been involved in many commercial developments, everything from commercial road building and to building high rises and also in redeveloping structures.

When we came onto this property in the early '80's we did a background check on it. We found that this was an operating winery, one of the oldest in the West. Basically it was redeveloped in 1980. And along with this, if you'll put up basically Picture Number 1, I'd appreciate it, I've been told to keep this fast, Sandra said keep it quick, but this is our future, I'm not going to roll through this baby too quick. The property in this was totally remodeled and basically turned over. If you'll go to 6 now. Page 6, Number 6, I didn't put them in order. No one said it was going to be easy.

TOWNE: I'm going to have to turn this sideways. That's not going to show up very well.

BARTON: The property involved is right here. It sits on a commercial area or used to be commercial area. It's basically construction is concrete. You'll see the property

above it is commercial, this is zoned -- this is where the new Yard N Garden is and this is zoned commercial too. The R-30 involved was down through this area here and then all of a sudden in their wisdom they take our permanent structure and put it in their R-30 which we're overwhelmed by finding out. If you'll roll to Number 3 now, please. This is a copy of an approved site plan by the County. If it were blown up more it would basically say the front building, which is this building, is a restaurant under construction. This site plan was basically for the rear building, it's an office building, this one was already approved and under construction, this is approved and we have multiple, if you'll go to Number 4, by the County.

We felt this would have locked in the future for this property. We turned around, invested our retirement income into the property. We took another family member in on the project and she basically was going to operate with the restaurant. We're overwhelmed to find out a commercial property, a substantial one, was totally taken off the rolls as commercial and put into residential. When we purchased it we had the one thing in mind, we're not in it for a short haul, we normally keep our properties long-term. This one we looked at when we found out the litigation issues involved and we almost rolled on the floor saying what do we do now, this could potentially bankrupt this property. The income is needed to pay the taxes, pay for the water, pay the light, the basic cleanup of the creek as to keeping the watershed in the area going. We intend to do our part, but we don't want to just lay down and be tromped on and somebody tell us that we have to make it into a club, as to a social club.

The churches we have allowed in this piece of property we use as a filler. We have offered the property to any of them that we are not renting at the time, and contrary to what the County feels we have maintained more than one tenant all the life of this property. We told them, this in the very beginning, months ago, and they took a stand, this is it, this is the way it is and we said it wasn't correct. We have records to prove that basically we have had more than one tenant through the life of this property. If we have space available and a nonprofit agency wants to use it or a church, we always make it available. It's hard to imagine a church behind a bar or a church behind a restaurant, but they always take advantage of it and we have had a situation where they have always managed to coexist without any problems. Why, we give them a basic knock down deal. We also have asked every one of them not to jeopardize our zoning and that's a matter of record with them.

Over the years we've watched the neighborhood change. If you'll go to B. Vancouver Housing Authority has assumed the apartment structure right behind the building. They assumed it a year or so ago. We're now dealing with maintaining the fence between the border between the two property. If this is the version of R-30, we wouldn't want it on the neighborhood. If you'll go to A. We're constantly, A, please, we're constantly vigilantly maintaining manpower to clean up and maintain the area. You'd think we're the local collection site for shopping carts. We not only do our property, we do 104th and we do the creek. How shopping carts get there I have no idea, but anything in our area we attempt to maintain. We go over to Holly Park if there's a -- we're running a cleanup area right next to them, we'll basically pick up the shopping carts, pick up the mattresses, pick up the couches. And it's gotten to the point, and I'm not on Vancouver

Housing Authority's case, they've gotten to the point where they bring in a container for garbage and just throw the couches in there, they understand. We bring the stuff up and throw it away, but all of a sudden we find our self policing the neighborhood.

We attempt to be a good landlord. We want to contribute to the neighborhood, we don't want to see it go down anymore. We've worked with the mall next to us in some cases, our immediate one, there should be on file someplace an Affidavit from the corner market. We do not know every tenant in the mall next to us. We will have some people that disapprove of our immediate tenant we might have tonight, but we as a landowner this is not about that, it's about our commercial zoning and what potentially happens to us with our holding of a piece of property. Are we going to be expected to tear down a solid concrete structure in rebar that was built for commercial status all to have their whim met. Somebody decided to change this. I don't know why, but it got changed.

If we'll go to Number 5. This is back to the basic classification. So we're the little dot in the middle with the commercial above us, the commercial to the west of us and the commercial to the south of us, the R-30 lies right behind us. Our little slice of land they're calling the A apartment structure that's part of our one parcel is kind of no man's land, what could be done with it, nothing, so it just kind of sits there. It's in the site plan showing some parking running up and around it. I can't see that we'll ever get developed beyond what is there now. If any one of us were asked if we wanted to rent an apartment on Highway 30 (sic) next to what's going on now, what would we say, would you want your children living there, would you want to put up with the noise of Highway 99. It has the transportation capabilities of supporting various types of industry. The County feels that our initiative to pave the front of our property rather than leave it muddy like some of the properties to the north is a bad decision. We felt it was better for the commuters that were bicycling through the area and walking through the area. If there's something else we can compromise and do, we'll gladly look at it, but don't again punish us because we took the initiative to put down some pavement to make it safer for everybody.

We've had to go to the point when the property was not occupied to literally drill holes in the pavement, put up a cable all the way around the property. Why, the apartments and everybody felt it was free, abandon your car and have a party in the place, that's not what it's about. We pay taxes. We want to be a good neighbor. We want to work with the neighborhood. Our immediate neighbor to the north, you should have a document in some of your papers there that is a letter, an Affidavit basically that he said, let me provide you, that says we are a great neighbor, says we're willing to work, we have been maintained a good relationship over the years with them.

If we'll go to 8. I will bring this up, I only have one copy. If in fact we're required to try and come up with a plan to demolish this building, the photograph up right now shows part of the construction, this has 22-inch solid concrete, with exception to reinforced beams, a 13-inch floor thick on top of it, a total of 35 inches of concrete are poured into the floors of that front building. It has a basement over 16 feet deep, 12-inch walls tapering up to 6. The thing was literally built commercially, it was an operating winery. They drove trucks across it, they backed in wagons there, they processed the product

for years. When it went through its major remodel it was a total revamp, the plumbing, the wiring, they went all the way through it, but they had to design it around the existing commercial foundations, walls, roof structures. If we're required to take this down, the raw estimate starting at a quarter million dollars from the demolishers is they said that just kind of breaks it up, then you have to deal with processing it, separating it, that will be another quarter million dollars, then we're going to be stuck with what do we do with the property. And do we find any soil issues, that could run easily another \$200,000, then we have to go out, basically tear up the whole parking lot, redo all the plumbing and decide what we're going to do. We're not talking about we can turn the page in a book and put a residential structure on there in even a year. You sit here night after night and listen to people say we've been at something two years, three years, four years, meanwhile we couldn't begin to get a bank to loan us 500,000 basic costs for demolishing against a property that is actually only worth 3 to \$400,000 in raw land, it wouldn't work, they would just laugh all the way. We would have to figure out how we would do it.

We look at it and say it will bankrupt us. It really will. The basic cost to tear the thing apart from something that was remodeled and approved we can't find a way. When the County approached or sent us the report saying, well, you could put a club in there, you could put an Elks in there, you could put a church in there, we talked to various clubs. We had one we thought, oh, this will be great until we ran a background check on them. I don't think anybody would want to see an adult social club operating in Clark County. I don't think you want to see a swingers club. They operate them in Seattle, they operate them in Portland, when we found out that's what it was, we broke off negotiations. The churches, we basically cut them a deal, we're taking the extra space and letting them use it at a next to nothing price, it hardly begins to cover what the cost of the property is, and we can come up with the Affidavit statements if they're needed.

We are just trying to be a good working part of the community. This property over its life span in conjunction with its tenants have donated back into this community over \$36,000 and that's on the bottom side. Where, to schools, to woman shelters, family shelters, Salvation Army and even Southwest Washington Humane Society. If you can't find a way to come about this, we look at it do -- how far do we take it, we have to go to the mat. If we don't go to the mat on this somehow we're going to find ourselves sitting with a bill so big to just demolish a piece of property and clean it up from what it was intended to use, intended use. This is our means of retirement. One of our family members that did operate within the restaurant passed away. She basically was hoping to spend her waning years operating it, it didn't come about. I basically have my own medical fight that I've been fighting for the last few years. This is not a matter of sympathy, it's a matter of fact, how many swords can you wield and how many hands do you have to wield them in order to take a piece of property back that was basically a part of an operation, that was a commercial part. I blinked an eye, didn't get a notice and it's gone, and now myself, my family, are going to be denied a right unless we can justify this somehow. I appreciate your time. Are there any questions?

LEIN: Any questions of Mr. Barton? Thank you, sir.

BARTON: Thank you.

NORDEEN: Good evening. My name is Dave Nordeen, I am an attorney. My business address is 7700 NE 78th Street, Vancouver. I'm sorry, 7700 NE 26th Avenue, Vancouver, Washington. I represent the Bliss Restaurant, its owners, James Kasch, Cedric Walker. Mr. Walker will speak to you here a little bit later.

Approximately four months ago Mr. Walker came to my office and said he had had a lot of problems, the police were constantly at the Bliss Restaurant, not just one officer but numerous officers there on a constant basis. He asked me what gives, they're driving my customers away. Well, I told him quite frankly I've been around this community, I've been a Prosecutor, I've done lots of work, legal work in the past, and I said, well, usually where there's smoke, there's fire. Are you over-serving? Do you got a lot of drug deals going down at your place and he said, no, no. I said, all right, let's check it out, let's get a meeting with the Sheriff's Office and let's see what's going on. And in fact we did have Mr. Walker and myself, Commander Nolan who was here earlier to (inaudible) and we had a meeting with other Clark County Deputy Sheriffs I believe somewhere around the middle of February and we discussed matters. They expressed their concerns to us, we told them what we were doing in regards to trying to take care of some of those problems. Nonetheless Sheriff Lucas has in two separate letters, one to the Liquor Control Board and one to the County Commissioners, recommended or made certain allegations against the Bliss Restaurant.

So I requested the Sheriff's Office, and it was referred to the Prosecutor's Office, let's see the data to back up your allegations. I was sent approximately 765 pages of documents which I have reviewed and this is what I found. The April 27th memorandum by the Long-Range Commission, Committee, denies or recommends denial. It lists lots of reasons why there should be a denial, I think those reasons have been addressed quite well by Mr. Sellers and his client that they really aren't there. So what is the true motivation. I think the true motivation comes from Rich Carson, the Director of Community Development, that the Bliss Restaurant should be closed down because it was becoming, quote, becoming, unquote, a public nuisance and that caters to, quote, local folks from the immediate low income neighborhood and folks from out of North Portland. My clients do operate a facility that has a racially diverse clientele, but there are no zoning laws or zoning laws cannot, and I'm not a land use attorney, you haven't seen me here before except for when I spoke as a private person on the Rural Enterprises about three or four months ago, I'm not a land use attorney but I do know enough that you cannot either implicitly or explicitly use zoning laws and discriminate against anyone whether they be of low income or from North Portland.

The history of the Bliss Restaurant is they opened last fall, the fall of 2003. When they opened the restaurant the lease indicated that it could be used for commercial purposes. They went and applied for and received their liquor license. They opened up and suddenly they became the attention not only of the local Hazel Dell Neighborhood Committee Association, but also the Clark County Sheriff's Office as Commander Nolan, by the way as you go through my file I do list exactly the E-mails and all the information I received from the County so you can look at it to back up everything I'm

saying, I do not make a statement unless there is something that backs it up, Commander Nolan indicated that, in her E-mail which is Exhibit B that they were going to have a, quote, very overt presence, unquote, at the Bliss Restaurant.

And let me tell you what "overt presence" means. I was at the restaurant myself on April 3rd, 2004. I was there for two hours, from 10:00 till midnight that night. Just before I got there Deputy Sheriff Dave Miller came in and checked out the facility, legitimate, no problems whatsoever, an officer should come in if they're serving alcohol, check it out, be our guest, didn't find anything unusual. At approximately 11:30 another Deputy Sheriff arrived, parked his or her car over at the Texaco station just to the north of the Bliss Restaurant, came into the Bliss Restaurant and looked around. About ten minutes later three cruisers, three police cars, pulled up in front of the Bliss Restaurant partially blocking the driveway on the northwest side. I saw one car with his blinker turned on to turn into the parking lot just keep on going by. Some of the officers stayed out in the car, some of the officers came into the restaurant. I was very curious why there was a need for such substantial police presence that night. I didn't see anything there. I didn't necessarily like the music that was going on, but that's I have a different type of music, I like country western and rock and not the type of music that's played there, but that's fine, everything else seemed okay. So I asked the Prosecutor's Office to contact the Sheriff's Department and find out why there was a need for such a police presence that night. I've received a bunch of information concerning all the calls that the Sheriff's Office had that night, but nothing to say why they needed all those people that evening.

Now the Sheriff's Office has supplied a substantial amount of information to the Long-Range Planning Committee and unfortunately a lot of that information is inaccurate. I would like to go through in basically Sheriff's Lucas' letters of December 18th, 2003 to the Liquor Control Board and to the March 1st, 2004 to the Clark County Commission, I believe they are a part of the staff's documentation and they're also a part of my documentation, but they basically list the problems that the Sheriff's Office had with the Bliss Restaurant. One of the complaints is that there were large crowds in the parking lot so that spilled over to the local businesses, that vandalism had occurred in the local businesses, that local businesses had been littered and that the parking lot was just plain too small for the Bliss clientele.

I then went through again all the information that was provided me. There was a February 5th, 2004 E-mail from Deputy Paul Prather to Sergeant Pat St. John's, and this was after the Sheriff's Office asked all the Deputies to come up with all the information they have, that had negative information concerning the Bliss Restaurant, and this is what the Deputy had to indicate. I have contacted the night employee of the Texaco at 104th and the strip about parking issues with the Bliss. The employee related that he had been in contact with the Bliss management and asked that the patrons of the Bliss not park in front of the store when the store is open for business and not block the fuel islands at any time. Texaco posted signage on the fuel islands notifying drivers that the cars will be towed. Texaco allows Bliss patrons to park on the southeast corner of the lot. The contact occurred in early November of 2003. I have not observed any parking problems. I have observed employees of the Bliss clean up

after their patrons who left garbage and other items in the Texaco's parking lot. So certainly some of the Bliss' clientele may not be the cleanest people in the world, but the Bliss Restaurant tries to make up for that.

The second issue was whether or not there were too many people, whether there was crowding within the facility itself. The Fire Marshal established that the appropriate capacity was 277 people. In the two letters by Sheriff Lucas he claims that there were 3 to 400 people on there on several nights. In my letter to both the Sheriff's Office and to the Prosecutor's Office I said, okay, tell me which nights, tell me which Deputy made the count. All I got back from the Sheriff's Office and the Prosecutor's Office was one E-mail indicating that someone told one of the higher up officials in the Sheriff's Department that there were 3 to 400 people there on several nights. No specific dates, no specific Deputies, no nothing. But was there overcrowding, well, take a look at Exhibit I. This is from the Fire Marshal. He inspected the facility on December 3rd, 5th and 6th, each time he found less than 100 people in the facility, approximately one-third of the maximum capacity. So we have one hearsay statement that is not backed up by the data, the data that I particularly requested and not received, but we do have from the Fire Marshal an indication that there are no occupancy problems.

The next point by Sheriff Lucas is that this area has a high incidence of pedestrian fatalities. I think there may be some fatalities on Highway 99 in the last few years. I actually witnessed one myself about 15 years ago. It was a very horrible situation. It occurred approximately a mile and a half from this place. But the real issue isn't whether Highway 99 is a bad place to walk as a pedestrian, it is, the issue is whether the Bliss Restaurant has contributed in any way to that problem and the bottom line it has not. Sheriff Lucas' letter also indicates at one point that there were eight fights or disturbances in just one month, between November 12th and December 13th. Again I asked for specific information to back up that claim, I received a lot of information, some of it which I did not understand. I sent another letter to the Prosecutor's Office asking for an explanation, I did not get a response. But I did receive one particular document, it's Exhibit J, which does show between that time period there were four disturbances and one fight at the Bliss Restaurant. I asked the Prosecutor's Office to supply me with the information concerning these five episodes that are listed on this one sheet to confirm that the Bliss Restaurant actually was involved, I did not receive a response. But what we do know is that there were not eight assaults, there was one assault and four disturbances exactly which what they were we don't know. Did someone litter, who knows.

Now perhaps the most damning argument that the Sheriff's Office has used against my -- against the Bliss Restaurant is that a homicide occurred there on February 29th of this year. Specifically Jason Ferguson stabbed and killed Lavell Lindsey at approximately 2:30 a.m. after the Bliss had closed in their back parking lot. Jason Ferguson is a very interesting young man, he has a very long violent past. Prior to this incident he had been convicted of felony assault, felony theft, felony firearm possession and drug possession. On October 22nd, 2002, he was sentenced to prison for 20 months for his felony assault. If in fact he had served that full 20 months, he would have been in jail or prison on the date of this incident and there would not have been a

murder. I don't know when he was released, but according to John Wood, his Probation Officer, as of November 4th, 2003 he had beat up his girlfriend, ex-girlfriend again and they were out trying to arrest him at that point. If the Sheriff's Office or VPD or someone had arrested him, again we may not have even have this particular problem. But this Jason Ferguson kid went with three friends, Jeremy Seley, Angela Meehan and Kristal Bagley to the Bliss Restaurant. They got there approximately three hours before, two to three hours before this incident occurred. Jeremy Seley is a friend or acquaintance of Jason Ferguson, the young man with the violent past.

Jeremy Seley when he went into the Bliss Restaurant saw two individuals who he recognized from the 8th Grade. They were L.G. Harvey and a Gabe Hill. Apparently in the 8th Grade Mr. Harvey and Mr. Hill had harassed or perhaps beat up Mr. Seley and he talked to them about it within the restaurant. As the police report indicates, this was a friendly conversation, you know, it's been eight years or whatever, and nothing happened, nothing happened between that. Later on that evening after the place closed down Mr. Seley, the young man who was embarrassed in 8th Grade, was leaving with Jason Ferguson, I believe Mr. Ferguson was driving an Explorer car, when he saw the two gentlemen that had harassed him in the 8th Grade and he asked Mr. Ferguson to go over to where they were parked. Mr. Ferguson drove over there and Mr. Seley got out of the car, approached Mr. Harvey, the primary person who had bothered him in the 8th Grade, and they grab each other and started wrestling each other and then they fall on the ground and they won't -- they're saying, well, look, we don't want to fight, we don't want to fight, let go of me, and one guy says I'll let go of you if you don't hit me and it goes on for like about three or four minutes like this trying to convince the other guy to let go first. Finally they let each other go, they get up, and in the meantime all Mr. Seley's friends are gone and the other gentleman's friend. In fact Mr. Lavell and another friend had been stabbed. Mr. Seley runs off and hides in a tree the rest of the night and that's what happened.

It's important to note that the Bliss Restaurant had nothing to do with this. There were no trouble, no signs that there was any trouble at all prior to this incident happening.

In regards to service of alcohol, which was the first thing I wanted to know, is I went through the police reports again. Jason Ferguson consumed one ice, one Long Island Ice Tea while he was there for two to three hours. If you know anything about alcohol metabolism, you can metabolize about one drink or if it's a Long Island Ice Tea, it's a pretty strong drink, say two drinks or one drink every hour. He was there for two to three hours, that means that at the time of the homicide Mr. Ferguson's blood alcohol, whatever it was, was either nothing or lower than what it would have been when he entered the restaurant. In regards to Mr. Seley, the young man who got in the wrestling match with Mr. Harvey, he had two mix drinks that night so his blood alcohol would have been about the same level when the wrestling match started as when he first arrived at the Bliss. Mr. Harvey, the other gentleman involved in the wrestling match, had one beer while at the Bliss. And Lavell Lindsey, the decedent, had consumed no alcohol at the Bliss. So, yes, this was a tragic episode, but in what way does the Bliss Restaurant have anything to do with it.

Probably even more damning of this is the fact that the murder would not have taken

place if the Sheriff's Office had remained in the parking lot. We have Deputy Paul Prather was at the restaurant that night, he was parked over at the Texaco station up towards about midnight. He then went over into the parking -- well, from 2:00 to 2:15 he was in the Texaco parking lot watching the Bliss Restaurant and nothing was going on. Nothing unusual. From 2:15 to 2:25, remember the homicide occurs approximately 2:30, he was in the southeast corner of the Bliss Restaurant parking lot basically where the murder was about to occur and saw nothing unusual. At 2:26 that night, approximately four minutes before the murder, he left the area noting that the security for the Bliss Restaurant was picking up garbage in the parking lot. If we -- if there was a Deputy Sheriff there who can't stop a murder, why would the security be able to stop a murder. The thing is Mr. Ferguson lost it when he saw his friends wrestling with the other guy, he got out of the car with a hunting knife and quite frankly sliced the heck out of Mr. Lavell.

In that letter by Sheriff Lucas he also comments totally irrelevant to what happened that night. One, he mentions that earlier that evening a gentleman was seen with a knife on his belt inside the Bliss Restaurant by a Deputy Sheriff. The implication is that's the same guy involved in this incident. The police department, or I'm sorry, the Sheriff's Department, their E-mails clearly showed that they were aware this guy had nothing to do with the incident at all so why was it brought up.

Second, Deputy Prather earlier that evening had driven by the Bliss Restaurant and saw security out numbering a couple of patrons in the parking lot and he turned around to see what was going on and the security had separated everything. He described it as a, quote, possible disturbance; however, when it gets into Sheriff Lucas' letter of March 1st to the County Commissioner, this becomes a big disturbance where the Bliss Restaurant should have but didn't ask for police support, that's not what the E-mail for the Deputy who actually was there said, that's what Sheriff Lucas said. So I thought there might be a separate disturbance that night and I asked for information concerning the second disturbance because there wasn't any connection between what Sheriff Lucas was saying and what Deputy Prather was saying. I've gotten -- I received absolutely nothing on that.

Other County or County agency, government agencies, do not back up a lot of what the Sheriff's Office allegations. We've already discussed the Fire Marshal's inspection and noting that, and noting that there was no overcrowding. The Sheriff's Office also indicated that the Washington State Patrol had special emphasis around this particular area because they were so concerned about DWIs. What they don't tell you is Exhibit N from -- I'm sorry, I'm sorry, I should have commented on over-service, the over-service complaint, were they over serving.

The Sheriff's Office indicated that they were over-serving; however, they don't mention Liquor Board Inspector John Kana's March 10th, 2004 E-mail where he goes through several times he's been at the Bliss Restaurant over, this is Exhibit N, over several, five months I believe, and that, yeah, there were a couple of little things here and there, but his conclusion is, quote, after conducting premise checks for the past five months I have not observed any over service or minor violations at the time of my checks.

The E-mails are also very enlightening. There's an E-mail to the Sheriff's Office from Bob Higbie dated November 21, 2003, it's Exhibit O, I'll just read from it. "From a "zoning" perspective, long range planning and code enforcement staff met with several of the principles two weeks ago. Based on our discussions, we determined that they may have a reasonable case to argue that the rezoning of the property from commercial to multi-family residential, in 1994, may be an "error" and that the zoning should return to commercial." So as of last November it looked fairly good for the Bliss Restaurant and Landmark, but that has changed, as we know now staff is recommending a denial. This denial came after the Sheriff's Department made several statements, many of which are not supported by the facts, and after Mr. Carson, remember Mr. Carson, we don't like patrons with low incomes and from North Portland, had briefed, quote, briefed, unquote, Commissioner Pridemore and Stanton about the situation and then talked to Commissioner Morris about it. That's Exhibit Q. That's his own E-mail. We don't know exactly what was told, but we do know that the day after, the day after the homicide he did send an E-mail to the Commissioners saying the following: "Sadly, this validates our concerns about this place. Hopefully, no one else will die before we deal with this problem. Personally, I have a hard time understanding how people can knowingly profit from such a business." Again, there's no connection between the Bliss Restaurant and the homicide, but Mr. Carson apparently thinks differently.

Then what really blew me away, I've been a practicing attorney for well over 25 years, I just got it in my head that everybody's equal under the law, everybody's entitled to due process, there was an E-mail from Commander Nolan on I believe March 3rd, 2004 to Mr. Carson. Commander Nolan had just had a conversation with Fire Marshal Joe Catisser where the Fire Marshal had told her that he had recently talked to the employees of the Bliss, that he had looked at it and he told them that it looks okay for your rezone. Commander Nolan was not -- did not appreciate that comment and told Rich Carson about it, sent an E-mail to him. Rich Carson's E-mail in response said don't worry because, quote, the Board of Commissioners will still hear the rezone request on the property and say no to it. Like I said, I'm not a land use attorney but I do do a lot of litigation and that ain't going to hold up in court, none of the judges I know. Are there any questions?

LEIN: Do you have any questions of Mr. Nordeen, please? Thank you, sir.

NORDEEN: Thank you. Mr. Walker.

WALKER: Well, I hate to follow that. I don't speak as eloquently as Mr. Nordeen because I'm not an attorney, but I'll do my best. My name is Cedric Walker, I'm a corporate officer and shareholder in the business known as I&E Incorporated doing business as currently Bobby McGee's but it was known as Bliss Restaurant and Cafe at the time. We currently employ approximately 24 people and we operate a full-service family dining facility that offers full-service menus for families up till 9:00 at night. After 9:00 at night we open up our establishment for more adult oriented service which would be more alcohol consumption, maybe dancing or some type of a show. Our facility also is a banquet hall where we provide wedding receptions and whatnot for the community.

Since we've opened we focus our attention on being an asset to the community. We've approached all of our neighbors in the surrounding community, we've talked to them to try and get some input from them if they had some concerns, if they felt that we were being unneighborly in any way to bring those concerns to us so that we can address them, to date we haven't gotten any complaints from any of our neighbors that we haven't been a good neighbor. Like I said before, we currently employ about 24 people, that's down about 26 or 27 people from what we used to employ when we were -- when we initially opened. Once our adverse relationship with the Clark County Sheriff's Office began our business began to plummet. We have a significant investment in this operation and when the business began to plummet, we began laying people off. And some people might consider the jobs that we offer as menial, but you tell that to the people that rely on that income I think they'd disagree with you when you have to lay off 26 people. We're not a large corporation but we provide a solid tax base in our community. The jobs that we do offer, you know, in a time of high unemployment, you know, it's rewarding if you're working, it's not rewarding when you're not working no matter what the job is. An honest living is an honest living.

We try to be involved in community involvement. We've offered our facility to groups for meetings and events during our closed periods. We're just trying to be a good neighbor since we've been there. Since day one we've tried to approach everything as being positive to the community, not a negative detriment to the community. Once we became aware of the Sheriff's Department's concerns we attempted to make contact to try to address their concerns. It just so happened that two of the Sheriff's Deputies actually came and met me, Sergeant Pat St. John and Officer Deputy Sheriff Prather, and they had expressed to me their concerns with our establishment. Not that there were any problems with it they said, they just said they were wanting to talk to us before they became problems. And they cited an establishment in an area called Five Corners that they had had tremendous problems with in the past, and when they spoke to me about it they said they were hoping that we wouldn't become that type of establishment, and being very open minded to law enforcement I told them without a doubt we would be more than happy to take whatever suggestions they would have and address them and try to have an ongoing working relationship with them to deal with anything that they thought would, you know, create a harmful environment for the community.

So we listened to their suggestions and we made some simple changes. We instituted dress codes, we invested 5 to \$7,000 in security equipment for scanning ID's, video photography, still photo photography, we thought we took the appropriate measures and beyond the appropriate measures is what was told to me by Sergeant St. John that they were asking for. But after we had taken these measure the harassment and the emphasis only increased and it just really boggled me why that would take place after I thought we were having a working relationship with law enforcement. Getting no real answer I attempted to call the local area commander. At that time I didn't know it was Commander Nolan, but we had a meeting set up to discuss, you know, ways that we can eliminate a strain on County resources, ways that we can deal with whatever problems might be coming from the community, and the day of the meeting I received a phone call from the Sheriff's Office that Commander Nolan would not be there for the

meeting. So at this point I'm very frustrated and I contact Mr. Nordeen and asked him if he could get us a meeting through his office with the, with the area commander, which he did and he elaborated on, and I thought at that meeting that we were making progress with the County to work together, but low and behold the process only intensified again after that meeting. We began getting Code Enforcement notices of illegal violations. It just went on. It was a tremendous stress and a tremendous strain when you have other people's lives that you're responsible for because you provide their main source of income that you're going to be shut down in ten days, I mean just like that in the mail.

And I had no idea why this was all happening, but I believed in the system and I trusted the system, you know, and I just told Mr. Nordeen, you know, let's try and work this out the proper way, you know, I don't want to look like a victim, I want to work within the community and we did everything within our power to try and get this thing reasonably resolved but to no avail. As a business owner in the community I think it, it would be almost futile to not try to work within the other community groups in your community and I think we try to do that, I think the record reflects that, and Mr. Nordeen has sufficient evidence to support that. You know, it's always been our desire, you know, and still is to this day, to work within our local law enforcement, to work with the neighborhood association, to work with our local neighbors and I almost feel apologetic that we have to bring this before you and take up your time because it's something that I think reasonable people could have worked out by now. I really do. You know, our business, just it wishes to be an asset in the community. We provide a valuable resource to the community. You know, we provide family dining, we provide mature entertainment for adults that want to go out and be in an adult establishment, we provide many good things for the community and I just don't know why we're being basically I don't want to use the word "attacked," but just shunned and I would really, really like to have an answer to that and I'm glad we come before an impartial body, which I believe that you people are, to hopefully get this resolved tonight. Thank you.

LEIN: Any questions of Mr. Walker?

RUPLEY: Mr. Walker, how did you communicate with the neighbors in terms of finding out if they had any complaints or offering to hear their complaints? You mentioned that earlier.

WALKER: Right. Well, in our local business complex there's directly across from us approximately I would say 10 or 15 commercial businesses and myself and my partner and our general manager at the time basically just walked over and introduced ourselves, handed out cards, and let them know who we were and we were the new tenants in the building and that we would be available at any time if there was any problems or concerns.

RUPLEY: Okay. Thanks.

STAPLES: My name is Linda Staples and I'm one of the attorneys representing Mr. Walker tonight. My business address is 1014 Franklin Street, Suite 204 here in

Vancouver 98660. I'll be very brief, everything's been pretty much covered. As Mr. Sellers stated earlier, I just need to preserve on the record for my client the issue regarding the Appearance of Fairness Doctrine. This is a quasi-judicial action being fact driven and site-specific, it's not a legislation, legislative action and so it does apply. Mr. Nordeen has attached numerous E-mails to his memorandum, I would once again like you to specifically look at Exhibit S wherein Rich Carson makes the comment about the Board of County Commissioners will still hear the rezone request on the property and say no to it.

I think it's important to note that it is my understanding that the proper procedure includes tonight's meeting resulting in a recommendation to the Board of County Commissioners. If the first meeting is tonight and the Board has not even received the recommendation from the Planning Commission, how did Rich Carson know on March 16th how the Commissioners would vote. There is no appearance of fairness in this process. Thank you.

LEIN: Any questions of Ms. Staples? Thank you. Mr. Sellers, anyone else?

SELLERS: No one else.

LEIN: Okay. Thank you. I will continue down the sign-up list then. Bud Van Cleve.

PUBLIC TESTIMONY

VAN CLEVE: My name is Bud Van Cleve. I live at 1407 NE 68th Street 98665. I'm president of the Northeast Hazel Dell Neighborhood Association. Reference has been made to our association tonight, but I have never been contacted by anybody so I don't know what reference they're talking about. We are the most active and the most visible neighborhood association in Clark County so we're very easy to reach.

I have just a few questions tonight. I've given you each a copy and you can use the second page if you'd like for answers to some of these questions if you have any, but this is from myself and representing on behalf of our neighborhood and questions that I have been asked by some of our neighbors. Why is this business allowed to operate in our neighborhood without a proper permit? Why is this business allowed to operate where it is when it is a safety hazard? Why is this business allowed to operate with a liquor license when they have had violations? Why is this business allowed to operate with a problem track record of fights on the parking lot that has already led to one death? These problems spill over into the neighborhood, and I'll elaborate on that in a minute. Why is a business allowed to operate with such a high rate of service calls from the Sheriff's Department? Why is the business allowed to operate with violations of occupancy over the limits set by the Fire Marshal? Why is this business allowed to operate creating all these problems? The business operators, neighborhood associations, the Sheriff's Department, the Fire Department and the Community Development staff from Clark County have been meeting for four years to find ways to revitalize Highway 99 and this situation is certainly not a step forward for us. Why do

we have codes if they're not going to be enforced? And the final question is: Why is an illegal business allowed to remain open?

I will go back and elaborate on the spillover. Excuse me. On the eve of Thanksgiving last year one of our Board members had a disturbance outside his house. He lives in Pepper Ridge, his house by driving is 1.2 miles from this location, there was a car crash, he and his wife went out to look and there was a couple, a woman, the man left in his vehicle, she was still in her's, and she said that they had just left Bliss Nightclub, had an argument inside, went outside, it developed into a fight on the parking lot, she got in her car to leave, he got in his vehicle, and every time she slowed down he rammed her with his car. I just mention that because I know they don't have any control over that, but it is spillover that we don't like out into our neighborhoods and when something is directly related to it that started and ended a mile and two-tenths, we got a problem. I hope somebody has some answers to some of these questions. Thank you.

LEIN: Any questions of Mr. Van Cleve? Thank you, sir. George Covington.

COVINGTON: No comment.

LEIN: Erin Nolan.

NOLAN: I'll apologize to Rich Lowry because he's probably having a heart attack that I am going to speak, but I'll be shorter than I think everyone else has. I've handed a packet of information, I folded it over because what's included in the packet are simply enlargements of the photos that are --

DELEISSEGUES: Excuse me, I didn't get your name and address, please.

NOLAN: I'm sorry. I'm sorry. Erin Nolan, I'm the West Precinct Commander for the Sheriff's Office.

DELEISSEGUES: Okay. Thank you.

NOLAN: 505 B NW 179th Street, Ridgefield. The Sheriff's Office has submitted a packet of information for your review which I'm sure that each of you have seen. What I've included tonight are enlargements of the photographs in that packet because in the duplicating process they weren't completely clear.

Tonight, though, I'm here to speak with you about our concerns for the rezone of this parcel, which is essentially what testimony is about in this hearing, and we are here to talk about particular concerns that we have based on safety and pedestrian access issues. There's been reference in the conversations tonight about the fact that there was a site plan approved in 1982. And I'm sure most of you were in this County in 1982, I was as a student at Columbia River High School. There's also been communication this evening about the fact that these are commercial structures of concrete built for commercial use and that in fact it would be problematic to demolish those structures. I would submit to you that the landscape since 1982 in this particular

area of the county has changed significantly. 99th Street, which is the main arterial to the south of this parcel, was actually a two-lane roadway. If you remember, Larry's Village Pantry was the country store that we all drove to at lunch time from Columbia River, bought our nachos and went back. 99th Street is now a major arterial with an enormous freeway interchange, with significant access issues, with significant pedestrian's improvements, Larry's Village Pantry is now essentially the Stockford Village Business Association area which has hundreds of apartments, numerous businesses and is part of the new Target development.

This piece of Highway 99 has changed significantly. Burgerville, which is the property to the south on the corner of 99th Street and Highway 99, obviously was not there in 1982. And if you look at this particular parcel and what was happening in that area in 1982, that also was significantly different. What we see today, though, on this parcel or what you see pictured in these photographs, what may have been an appropriate site plan in 1982 we would submit to you is not necessarily an appropriate site plan today.

If you look at the first enlarged photograph which is at the top of your packet, you'll see that this is actually the north corner of the business structure located on the parcel to be rezoned. What you'll also see is a vehicle that is parked adjacent to that building that actually abuts onto the travel surfaceway of 104th Street. Directly to the east of this building is the A section that's been referenced previously in this hearing, and behind that is the Maple Knoll Apartment complex. The Maple Knoll Apartment complex has 148 units with an average occupancy of four persons per unit for a total if you just do the short math of 592 people living in that complex alone. Where you see the 25 mile per hour sign there's a paved sidewalk that accesses those apartments and the site is developed. If you are a pedestrian and you are trying to access the C-TRAN bus stop that is on the west side of this parcel, you would actually have to walk in the travel lane of 104th Street around the vehicle that's parked there, around the fencing that goes out from the building, and then actually through the driveway access at the north side of the parcel. And I would submit to you that I sent two Deputies out there on an average day just to take some photos to see what they saw and this is precisely what they found.

If you turn to the next photo this actually shows a view of the apartment complex, the speed sign, and 104th Street. 104th Street, as you know, leads to another large apartment complex, the Ridgecrest Apartment complex which has also been referenced. That also is multi, multi apartments, I don't have the number with me, but frequently pedestrians walk also from that complex to the corner market and are forced to do so by way of 104th Street. And if you look at the next photograph you'll see a gentleman with his children that just happened to be walking there that particular day, and if you look at where they're walking they're actually walking on the travel lane of 104th Street. If you look at the next photograph, this is the 99th or the Highway 99 frontage on the west side of this property, and as you look at the next photo, which is a closer view, you will see, and what will start to come into view is a pedestrian, I guess it's a safety pad which is actually a C-TRAN bus stop. As you go to the next photograph you'll see the sorts of obstacles that pedestrians -- sorry.

LEIN: That's not you?

NOLAN: I hope not. -- you'll see the sorts of obstacles that pedestrians encounter as they try to walk to that C-TRAN bus access where there are no pedestrian improvements whatsoever. And if you look, you can see that the frontage of this particular property is essentially a paved driveway slash parking lot slash access way with only a bark dust and curbed median on one portion of it. If you turn to the next photograph you'll actually see in close view the C-TRAN bus stop, and what you'll see is a vehicle on that particular day that happened to be making a right-hand turn and the only thing protecting the pedestrian from the traffic is nothing. The pavement continues from Highway 99 from the shoulder with a white line directly onto the C-TRAN bus mall.

While we appreciate commercial business in the County, the Sheriff's Office is involved in this particular case for a number of different reasons. First of all, to speak about Highway 99, when I went to the precinct in 2001 as the Precinct Commander, Highway 99 had experienced a 300 percent increase in pedestrian fatalities in that corridor. In 2002, the first month of 2002 I believe, two more pedestrians were struck on Highway 99 in the 11200 block, one was killed. The Sheriff's Office during 2002 and 2003 focused our patrol efforts on pedestrian safety on Highway 99 and on pedestrian violations on Highway 99. The parcels in question were essentially vacant until late 2003. With no vehicular traffic making regular access to the parcel, pedestrians were able to traverse the property going to and from the apartments and not concern themselves with being struck.

Even with the barriers that were in place with the chains and the barricades, pedestrians still easily could traverse the property and were blocked actually from traffic. When this business opened we actually have the conditions that we see today which are property frontage onto Highway 99. That essentially is a driveway from the southern portion of the parcel, it allows exit from Highway 99 into the parking lot of the restaurant, it's unimproved, it provides only a white line for traffic and I would submit to you that traffic conditions on Highway 99 have changed substantially since 1982. As you could read through the packet, you'll see that our focus is clearly on safety. If this parcel is to be rezoned, we don't believe that that should be accomplished without significant site improvements. I'm not certain how it is that you could overcome the pedestrian safety issue on the north part of the parcel without demolishing at least some portion of the building. Granted, there would be significant expense to demolishing portions of any sort of a structure, and I think the County is very familiar with that with the recent demolition of the concrete building on Highway 99 for the Highway 99 realignment.

What I'd also like to talk about is I'd like to talk a little bit about issues in this particular case and some of the comments that have been made particularly by those that have spoken about this particular issue. Mr. Sellers made presentation and talked about the site plan in 1982. He indicated that traffic would actually be reduced with commercial development and I can tell you that that has not been the Sheriff's Office experience. Granted our experience has been primarily with the current tenant which is Mr. Walker, Mr. Kasch and their establishment now known as Bobby McGee's. He indicated that there were perceived police issues that had been brought forward to the County, to the Community Development Department, to the Prosecutor's Office, and I can tell you that those issues are far more than perceived. The Sheriff's Office was drawn to this

establishment because of the activity that was occurring at that establishment. We have experienced significant calls for service at this location while it has been a commercial development, particularly with the recent tenants, and unfortunately that has caused us to devote our resources towards this commercial development and has caused us to divert resources away from other people in the county who might be calling 9-1-1 and who might be needing us.

To address some of the comments of Colonel Barton, he indicated that there is a watershed to the south, which there is, that several churches have used this property intermittently and essentially we at the Sheriff's Office again are not opposed to commercial development. In fact we support commercial development because that supports free enterprise, it supports the tax base, and it helps support us actually in this county. The issues, though, with this particular situation are about a bunch of different processes that essentially went wrong and the Sheriff's Office unfortunately has had to absorb the impacts of that. The letters that you have attached to the packet are letters that we addressed to the Board of County Commissioners with regards to the reissuance of or the renewal of the liquor application for this establishment and were letters that we forwarded to the Liquor Control Board regarding that issue.

Mr. Nordeen in his lengthy narrative talked a lot about some of the specific issues and I would submit to you that that is not particularly relevant to why it is that we're here tonight; however, if I was to use the logic that was utilized in Mr. Colonel Barton's narrative, how many swords do you have to wield for action to happen and I would say that in this case at least one sword wielded pretty significant action. And if you ask Mr. Lindsey's family how many swords could have or should have been wielded, the knife that was used in that homicide was certainly severe enough. If we address Mr. Nordeen's issues, essentially there are several E-mails from the Community Development Department. There are also significant issues in this case that I'm certain we'll all hear about again in a court in this county or if not elsewhere; however, we are talking about issues that have everything to do with livability, quality of life, pedestrian safety, and in this area of Highway 99 we have experienced significant pedestrian safety issues. Homicides of pedestrians being struck by vehicles on Highway 99 I would submit is not a risk that we are willing to absorb. We inquired into this process because were this a lawfully established business that complied with County regulations, zoning, code enforcement, liquor control and so on, we would simply be trying to partner with this business owner and do what we could do to mitigate our calls for service.

Mr. Nordeen mentioned a conversation and some E-mails involving Deputy Paul Prather and Sergeant Pat St. John in which Deputy Prather went into the bar and noted that he took a knife off a patron. The reason that that information was significant to Deputy Prather is that that followed the meeting that Sergeant St. John and I had with the owners of Bliss and with Mr. Nordeen where they assured us that they were taking measures to ensure the safety of their patrons by doing security checks, wandng their patrons for weapons and so on. Deputy Prather actually took the knife off the patron, took it to the owners and suggested to them that the provisions that they had ensured us were occurring were not in fact occurring at their establishment, hence our concerns.

When Mr. Walker spoke to you he indicated that they were focusing on being an asset to the community and I would suggest that business owners who are focused on being an asset to the community would in fact live the very words that they were expressing here, an honest living is an honest living, and an honest living is submitting to the rules and the regulations that are put before you.

Many of the issues will be argued different places through different Boards, perhaps through the County Commissioners, perhaps through civil court; however, I would submit to you that the issues that are present in this case, particularly when you look at this site and you look at the issues that face the people that walk to and from this place every day, they are substantial. And I would submit to you that homicides, be it a stabbing in the parking lot or be it a pedestrian that is struck, are simply not a risk that anyone in this county should be willing to absorb.

Finally, there's been some talk about neighbors and partnerships and this particular neighborhood. We actually partnered with the Maple Knoll Apartment complex which is the apartment complex that borders this property to the east. I met two years ago with the new owners of that complex and their on-site managers who partnered with us to agree that they would take steps to clean up that complex. I would submit to you that through their efforts they actually have accomplished nearly a 43 percent decrease in calls for service to their apartment complex, not through the work of this commercial establishment but through the work of the on-site owners who have taken a stand and have taken control of a property that was generating a great deal of calls for service for us. Mr. Nordeen implied in his commentary that had the Sheriff's Office actually arrested the wanted felon that was happening to frequent this place on this particular night and that had we been doing our job and made an arrest on that person, that in fact the homicide would not have occurred, and by that logic, while that may be true, we would submit also that were this property not improperly developed outside of current zoning, outside of County processes, that in fact there wouldn't have been a commercial establishment there for these people to frequent and therefore the homicide may also not likely have occurred.

So with that we would submit to you that community policing is part of our mission. This is not about who these people are, it's about the effects of what it is that has occurred, and it's about the effects and the resources that the Sheriff's Office has put towards those impacts. Questions?

LEIN: Any questions of Ms. Nolan?

MOSS: Commander Nolan, you have voiced a considerable concern about the lack of pedestrian facilities along the frontage of this place on both Highway 99 and on, what is that, 104th.

LEIN: 104th.

NOLAN: 104th Street.

MOSS: 104th. Don't those same conditions exist across the street at Holly Park?

NOLAN: Well, 104th Street basically has Holly Park, it's actually called Ridgecrest now, on the north side and it has Maple Knoll on the south side. The issue is 104th Street once you get to this particular parcel you have driveways on either side and no, no accessway, no walkway, no improvement whatsoever for a pedestrian to walk on where they're not actually in a traveled -- in a travelway.

MOSS: Isn't that the same situation that you have on the north side --

NOLAN: Yes. The point is it's --

MOSS: -- as illustrated by your photograph?

NOLAN: Both sides, correct.

MOSS: And isn't the situation almost the same to the north of 104th Street as it is in front of this along Highway 99, there's no sidewalk there for pedestrians? I guess what I'm leading to is would you suggest that those businesses be closed also?

NOLAN: I would suggest that if I had all the money in the world I would put sidewalks all over this county, but that's not realistic. In this particular case the property on the north side of 104th Street is a conforming use, it's been open for commercial property and that's not the issue at hand. The issue at hand is the property on the south side which is this parcel which based on the information that we've been provided by the County was actually an abandoned property, it was rezoned during a comp plan update which was a public process where while the owners may not have been individually notified would have had access to that information and we're simply saying that the County made the right decision, and that if in fact they're going to rezone this as commercial, then we believe there need to be significant and substantial site improvements so that it is in effect a functional safe business whatever it may be. And if in fact they had it properly permitted, bar, nightclub, whatever they wanted to have, we would be fine with that provided that all of the provisions and all of the steps in the process were followed appropriately, and based on the information that we've garnered in this process we don't believe that that was the case in this instance.

MOSS: Well, Commander Nolan, if this Planning Commission recommends to the Board of County Commissioners that the property be rezoned to commercial and the issue of nonconformity goes away, would you then view this property the same as you do that property across the street? I mean would your issue go away? It seems to be very much related to whether or not this is a nonconforming use. If we make it conforming, doesn't that go away then?

NOLAN: Well, our understanding is that if it's rezoned as commercial that there would then have to be site plan review which would then require significant improvements which would then alleviate many of our concerns.

MOSS: Then you wouldn't object to the rezoning?

NOLAN: Not provided that there are significant site plan improvements.

MOSS: Thank you.

LEIN: Any other questions?

RUPLEY: I have one additional question. What kind of conversation, Commander Nolan, has happened in terms of public safety in terms of moving the C-TRAN bus stop if this area is such that it's dangerous for pedestrians?

NOLAN: We actually have not had formal conversations with C-TRAN regarding that. We actually -- I believe the date on the photographs is April 28th and it's been kind of an unclear process what, what sorts of avenues would occur in this situation. There are a number of processes that were involved in regarding this particular property and the business that's operating there and the pedestrian safety issues are one facet of that. We have had conversations with C-TRAN regarding this particular property and those conversations continue. We have not yet specifically addressed moving that stop; however, due to the number of people that use this stop I'm not certain that that's going to be possible, but that is certainly something that we are looking at as well.

RUPLEY: Okay. Thank you.

LEIN: Anything else? Thank you very much. James Kasch, if that's correct.

KASCH: Yes.

LEIN: Would you like to testify?

KASCH: No.

LEIN: Okay. Rita Hardy.

HARDY: No.

LEIN: Is there anyone else that was not on the sign-up list that would like to come up and testify, any new testimony? Okay. Then we will return it to the Planning Commission. I'm assuming you don't have any rebuttal?

RETURN TO PLANNING COMMISSION

SELLERS: I do.

LEIN: I would like to make sure that we don't have rebuttal from 15 different people here. Okay. Thank you. Mr. Sellers.

SELLERS: One request I make of these, can I see the Officer's photo? We haven't seen the Officer's photo.

LEIN: Certainly.

SELLERS: Actually the one that relates to 112th.

LEIN: This is the blow-up stuff.

SELLERS: Thank you. This part that the Officer represented being on the private, on the traveled roadway, is that on the traveled roadway?

BARTON: Quite honestly it's off of it. This, our property line does border the roadway and just above this car the Officer did not mention we've graded back off the roadway, we've rocked it, and we've asked the utility to remove a junction box so we could pave it, but she didn't see fit to mention it to you.

SELLERS: And the car is not on the traveled roadway. Just a couple of comments. When I was a County employer or shortly after I left my County employment in 1979, there was a young woman that worked at the County, actually in the Personnel Department, who had too much to drink one night at a restaurant, or excuse me, a bar, a tavern across the street from this property and a little bit north, I think it was called the Top Hat but I can't remember for sure, and she attempted to walk across Highway 99 and she was hit and killed. I mean Highway 99 is a big arterial and there's going to be deaths on Highway 99 and you can't garret property owners to prevent all those deaths. This is a fairly reasonably laid out parcel and my client has tried to address the situation on 104th which is a lot more than most of the other property owners attempted to do. If you also look at the photographs in the submission that my client had, that Colonel Barton had, on Page 9 of 17 and on Page 10 of 17, it shows the stretch of roadway, the width of the pavement beyond the fog line from his property is wider than anyplace on Highway 99. In fact if you -- there's one photograph in which you can look south, it's the top photograph Figure 9 on Page 9, where there are real problems is when you get back toward where the County's bridge crosses the creek, then it really gets narrow and dangerous for pedestrians to walk.

So although I can't argue with the proposition that pedestrian access could be made safer, I think it could be, but it has to be made safer on all of Highway 99. This property is better than most, but it's typical of most also. I can't remember what the property looks like that where Yard N, I think it's Yard N Garden went in across the street, I can't remember what they have for sidewalks. So, you know, it's nice, I mean it's a good thing, to care about traffic safety, traffic safety is important, this site does not -- capable of providing all the traffic safety that Highway 99 requires.

In any event, I think that that addresses the -- just the few issues I wanted to mention. You've heard a lot, I don't want to go on and I thank you very much for hearing our case.

LEIN: Thank you, Mr. Sellers. Anyone else? Thank you. Return to the Planning Commission. Any questions of staff? Comments?

RETURN TO PLANNING COMMISSION

LOWRY: One quick comment. You've heard an awful lot of testimony tonight about a particular tenant in this complex and whether that tenant's operations are or not being properly conducted. My advice to you is that is all irrelevant to the land use decision that's before you. I didn't jump up earlier because I think although irrelevant to the substantive standards, I think the primary reason it was offered is to suggest that the staff recommendation has been tainted by this background information and that may have some marginal relevance to the decisions that you need to make. But you need to make this land use decision as you would under any land use, any other comp plan decision based upon the merits of the generic land use issues, not any specific operator.

LEIN: Thank you, Rich.

DELEISSEGUES: Well, Rich took the words right out of my mouth. I was going to say there's a number of issues here that whether they're in compliance with the law enforcement or compliance with capacity set down by the Fire Marshal or a number of others, they don't really have an effect on whether or not it's properly zoned. I think that the zoning's one thing and enforcement of all the requirements that go along with that zoning is something else that everybody that has a commercial property is faced with.

And so to me it seems like as unsavory as some people may think this is, that it's been there, a well-established commercial enterprise for many, many years and the landowner through the history of the thing had no reason to request a rezone, but it was rezoned anyway under planning. Whether or not the landowner at that time was issued a notice of that rezoning, I don't know.

LOWRY: He would not have been. This was part of the 1994 countywide redo of the comp plan and individualized notices were not provided.

DELEISSEGUES: Well, my thinking is that I would recommend that we approve the request of the owner for the reasons that makes sense from a land use standpoint. And I do agree that a number of conditions and requirements may have to be met for that permit to be issued.

LOWRY: Let me jump in again.

LEIN: Yeah, I don't think there's anything there because they would have to make some modifications to be tied into site plan review so we're really --

LOWRY: They may or may not. They have a site plan review that goes back to early '80s. If the commercial zoning is restored, this would become a conforming use and I'm

not prepared to give you an off-the-cuff opinion as to whether or not site plan review would have to occur because there was any kind of change in use. Change in use does trigger site plan, but this is a change that's going back to the original use. I also would, frankly, need to know a lot more about how the current restaurant differs from the historic restaurant, whether there's it's got larger or not, whether the facilities have substantially changed in some way that could require site plan approval. We don't generally require site plan approval for a change in use that doesn't require an increase in parking under standards. So I mean it may or may not be that site plan review is required for this particular use.

LEIN: But that's not something we would be deciding here tonight. Just like the issue of whether it was closed down for a certain amount of time, that becomes an issue that the County would have to deal with separately. We're looking at a land use situation only.

MOSS: Yeah, we are.

MABREY: If I could make just one more comment, Mike Mabrey again, to correct the record. It is clear on the prior zoning map that existed prior to 1994 that the smaller parcel was designated A1 and I think you can see that on the map there. And the other correction is that it is indeed a typo on Page 2 of the staff report that says that the current business operating on the site is not permitted under the CH zone. It should have said --

LEIN: It is permitted.

MABREY: -- in the urban high zone.

MOSS: And what was A1?

LEIN: Apartments.

TOWNE: Apartments.

MABREY: Apartments.

SELLERS: I want to make it clear that we don't agree with that.

LEIN: Other discussion and comments?

MOSS: Well, I don't know. This is certainly an unusual -- I've heard a lot of things tonight that are really bothering me, but it's not the role of this Planning Commission to take those things into account and I'm going to set that aside. I will say that I find this one somewhat surprising, though, because it clearly seems to me to be a mistake to have this as multi-family zoning. I know that there was a lot of effort back in 1994 to change the character of the Highway 99 strip, you know, this kind of strip development is not looked upon with favor by urban planners in general. I've certainly heard that from several sources. As the owner of a business on Highway 99 I'm not entirely in

agreement with that, I think it's a pretty good place to have a business, so I guess I have some prejudices too.

But in looking at this, it seems like the change in zoning here was obviously a contrivance to break up the commercial. It certainly didn't recognize what was going on there, certainly given the legitimacy, and I guess I've said this before but I'm going to say it again, I'm really bothered when we allow this kind of a significant change to occur in zoning and ignore what's gone on when people have invested huge sums of money and effort and time and they've done that in accordance with the zoning that's in place and then we change that zoning. To me it really subverts the intent of long-range planning and it makes kind of a mockery of it. As you'll recall, we had a comprehensive plan in effect that was adopted in 1980.

In 1994 we made some wholesale changes, or our predecessors did, to that plan that really ignored the existence of a lot of businesses that had been built in conformity with that 1980 plan and the plans before that. You know, we're ten years into this 1994 plan right now and I guess if, you know, if the past is to be repeated in the future, we're about four years away from throwing this plan out and starting all over again. Now I don't think that's a good idea. I didn't think it was a good idea when it was done in 1994. I'd like us to have a little more -- to lend a little more credibility, I guess, to the long-range planning process and this property to me was clearly mistakenly rezoned.

LEIN: I think I would have to agree with you. And we've spent a lot of time looking at property to the northwest of this along Highway 99, we've had a lot of things come back before us in here, and I think if you look at the map you'll notice that the parcels that are zoned with a higher residential, you have CR-22s, R-43s, there's only one of them that touches Highway 99 and that's because of an access issue, everything else is protected from them, and I really can't agree with staff when they say that this parcel or these two parcels should have been included as R-30. I agree with Lonnie that there was a lot of things done in 1994 and it wasn't a perfect plan and things got missed and I think this was one of them. Any other?

SMITH: I agree. I, you know, sitting here for the last couple of hours I feel more like I'm on a jury than on a Planning Commission, but I agree with Lonnie, we aren't here to judge what the landowner is doing with his property, we're here to look at zoning and it does appear to me that this was if not an error a mistake back in during the comp plan. Again, I think this is the appropriate zoning. I would like to ask the applicant if they have any plans, they may not be any worse than anyone else out there as far as the safety is concerned, but are there some feasible changes that can be made to that property to make it more safe?

BARTON: Just in the document that I gave you we expressed that we are willing to work with the County. Safety is an issue and we can understand it, that's why we moved ahead on 104th, graded it and rocked it. If we can get the utility company to bury their phone line or move it, we'll pay, we'll basically put a sidewalk in there, but the County has to agree with these issues. We're willing to work with them, we've never denied that. Okay. Any other questions?

SMITH: Thank you.

RUPLEY: Why don't you also work with C-TRAN to put a shelter there so that we also have safe people waiting for the bus too.

BARTON: We've never objected, we pick up that area, but they do a good job of maintaining their own area.

LEIN: I think we had quite a good conversation. I'll entertain a motion.

MOSS: Well, I'll try one. I **MOVE** to deny staff's recommendation of denial and forward this comp plan amendment on to the Board of County Commissioners with a recommendation for approval.

LEIN: Is there a second?

DELEISSEGUES: I'll **second** it.

LEIN: Moved and seconded. Any further conversation? Could we have roll call, please.

ROLL CALL VOTE

MOSS:	AYE
SMITH:	AYE
RUPLEY:	AYE
DELEISSEGUES:	AYE
LEIN:	AYE

LEIN: Be forwarded on to the Board of County Commissioners for their recommendation and final adoption. We'd like to take another quick break here so that people can -- we have three more left and they must be easy ones.

(Pause in proceedings.)

PUBLIC HEAIRNG ITEMS & PLANNING COMMISSION ACTION, continued

D2003-029 (Patel) The property owner is seeking to redesignate and rezone parcel 186610-000 for approximately 3.85 acres from Urban Medium (R-18) to General Commercial (CH) located at 12200 NE Hwy 99. Staff contact: **Colete Anderson 360-397-2375 ext. 4516.**

LEIN: We'd like to reconvene the hearing and continue on with tonight's agenda. The next one is Patel/Salmon Creek. And Ms. Anderson, I think.

ANDERSON: Yeah. Docket Number D2003-029, it's behind your Tab Number 21. The applicant is requesting to change the comprehensive plan designation and zone for an approximate 3.83 acres from urban medium designation with an R-18 zone to general commercial with a CH zone. Prior to the 1994 comprehensive plan the property was zoned highway commercial. It has a very old Highway 99 type hotel on the site and it was one of those magic areas that back in '94 the Long-Range Planning group as part of the comprehensive plan picked the area around the Salmon Creek/Klineline Park area and redesignated the property there to R-18 so it would redevelop.

So in this case, based on that and several other findings we have, we're recommending that the Planning Commission forward a recommendation of denial for this application's request. The most significant finding we have for this is that if this parcel changes, it creates an island of residential that actually would be sandwiched between I-5 and the hotel property and it would be very difficult for the remaining properties to redevelop as an R-18 use.

LEIN: Okay. Are there any questions of Ms. Anderson? If not, is there a representative of the applicant?

WARD: Thank you, Mr. Chair, members of the Planning Commission. Good evening. My name is David Ward, I'm an attorney at the Landerholm Law Office. Our address is 915 Broadway, at least until next week when we will be moving next door to the (inaudible) B of A building. I'd like to just first start by thanking staff, I think, for allowing me to move this hearing to tonight. We were originally scheduled for I believe the 17th and they allowed me to get a much needed vacation so I appreciate that. I will try to be brief, it's been kind of a long night so. A little bit of background. The parcel in question, maybe we can just highlight that real quick.

TOWNE: I don't know if you want the aerial or --

WARD: Yeah, probably not. The parcel map, that's a little easier to see. It's the one with the dot on it there. It's a 3.83 acre parcel that was originally zoned highway commercial in the -- but prior to the 1994 plan. Mr. Patel purchased the property in 1991. At that time it was his goal to run the business for a few years and then expand it substantially. It is a fairly old hotel in need of somewhat significant renovation. In 1994 this approximately 4-acre parcel and the surrounding almost 12 acres was all zoned R-18. Again, the goal here was to create this node of multi-family development. The unfortunate result of that rezone is that Mr. Patel's goal of expanding his property can no longer happen. I've got some written comments in the record which I should probably just make sure that you've got. It's a June 15th, 2004 letter.

LEIN: Yes, we've got it.

WARD: Did everyone get that? Okay. That letter is far more detailed than I'm going to go into tonight. It includes what I believe are the justifications for the rezone and how I believe the rezone request meets the criteria. We sort of had a little bit of cart before

the horse action here. Staff issued the staff report recommending denial. At that time Mr. Patel called me for help so my comments respond basically to the staff report and provide additional justification. I think what we've got going on here is sort of competing planning policies between economic development and housing. Some of the economic development policies that I think are furthered by Mr. Patel's request, in particular GMA Goal 5 which states that it -- and in which it encourages the promotion of the retention and expansion of existing businesses, and I'd like to touch on one of the rezone criterias now which is the market study.

We have not submitted a market study at this time. The reason for not doing that is that we do have an existing business here which does have existing clientele. Mr. Patel's actively operating the motel and people are renting rooms from him; therefore there's really no need to demonstrate that there's a need for this commercial business as it is existing currently. The second one is a County comp plan policy which is Policy 7.3.3 which encourages commercial lodging that can capture or support tourism. This facility is approximately 3.5 miles away from the Clark County Amphitheater which I had the pleasure of working on along with Mr. Printz. It's within walking distance to Klineline Pond and the Salmon Creek Greenway. It's also less than a mile away from the softball fields which are probably just off the screen there which if any of you have ever been down there about this time of year are extremely busy. And a lot of people travel for those games, so I think we do have an area here where we can support some tourism.

One of the other criterias is the better implementation of the comprehensive plan. By recognizing the existing zoning I think we do, or the existing use of the property rather, I think we do better implement the comprehensive plan. The staff's justification essentially is that some potential housing units will be removed from the inventory and that it will destroy the potential for this node to develop. A couple of comments on that. There's no doubt that removing 4 acres out of this 15-acre area will reduce some housing units, but it really I don't think it does destroy the potential for the rest of those units to develop. This piece is right on 99, it's also right on 122nd Street, so it's there on the corner. The residential has -- there's plenty of room for the residential to expand around it. The Patel parcel, as I said earlier, is really 3.8 acres of the entire 15.53 that is zoned that area, so I think there's plenty of room.

I think what we're -- one of the things, too, that I would throw out there is, and I just sort of thought about this tonight and we talked about it briefly, is the possibility of doing a concomitant rezone agreement. If the Planning Commission is concerned that this is going to be utilized under some other use, we would certainly be willing to agree to some sort of a concomitant rezone agreement which would limit the uses of the property to the hotel. That's what Mr. Patel wants to do with his property, that's why he bought this property, and that's why we're here tonight. So I'd just sort of throw that out there, you know, as a first blush look at something like that. I think by zoning -- by rezoning this property back to where it was prior to the '94 plan, you strike a balance between this economic development goal and housing goals that enables Mr. Patel to do with his property what he purchased it for and still enables the residential node to build up around it. And with that I'll take any questions.

LEIN: Any questions of Mr. Ward? Thank you.

WARD: Thank you.

LEIN: Was there a sign-up sheet, Mr. Higbie?

HIGBIE: No.

LEIN: There was. Here's one. We've got them all up here. Thank you, Mr. Higbie.

HIGBIE: You're welcome.

LEIN: All right. Anya Spielberg.

PUBLIC TESTIMONY

SPIELBERG: My name is Anya Spielberg. I reside at 1518 Z Street and I'm property owner of 1910 NE 122nd Street, which is kind of that tall shaped piece, a couple of pieces behind, yeah, and borders Mr. Patel's, and I was a lot brighter about two hours ago but I'll do my best here. You know, I don't -- I'm really interested in what problems might be created by this being rezoned, but, you know, I'm kind of -- I don't have a strong position either way. What I feel is that this is a very scary street right now. I don't know how, if any of you all have been down 122nd, it's scary. It's been scary a long time. I wish the police that had been at Bliss would be on my street because there are constant, constant drug deals going down, constant. And I guess I do have a real estate background and I guess if I were the owner of a hotel that had been rezoned, I wouldn't be real interested in putting money into something that if it burned down it wouldn't even be legally able to be rebuilt. So I see him really stuck in a position where it's not in his interest to really add on or improve that property and it is just going downhill with each year and it's creating more of that environment on this street and it's bringing down Highway 99 and it's the exact opposite direction of everything we're trying to do otherwise.

So I'd be really in favor of any improvement, any decision that might be made that would give him the momentum to improve the value of his property and the value of the community. I really hope that that wouldn't adversely affect my interest in, you know, probably what the staff team and the original rezoners had envisioned, which is that delightful creek and maybe some town homes or more residential opportunity with an upbeat feeling. I really did have that vision for the piece when I bought it and I'd like to bring my neighbors on board with that. But my little contribution has been putting up a fence in the roundabout that is behind Mr. Patel's piece so that drug deals aren't constantly going down behind my little house. And it is really, really bad. So I would, I would just really be in favor of anything that would support improvement in this area. And I can tell you for sure that if I were him or any of you were him, you probably wouldn't be motivated to do anything with this current situation. Thanks.

LEIN: Any questions of Ms. Spielberg? Do you have a question, Dick?

DELEISSEGUES: Well, I just kind of wondered if you're in favor, then, of the opportunity to rezone this so that he might be able to improve his property?

SPIELBERG: Yeah. And I think I, I don't, you know, I don't -- I'm not that savvy on what the commercial options would be for him if it were just carte blanche rezoned back to the commercial. The motel, you know, I would hope for the best and maybe limiting it to a motel option maybe that would be protected. I'm a little afraid of being abandoned, you know, in this little back area. And I really, to be honest, I'm not that -- you may know more of, the team may know more about what negative impact that might have on me as an investor with this piece, but, you know, truthfully I'm looking at the bigger picture. I love Vancouver and I want to -- I guess I'd be in favor if I had to take a position with my limited knowledge right now. But I guess I just want you to consider, you know, the various issues I brought up. Thank you.

DELEISSEGUES: Thank you.

LEIN: Harry Patel.

PATEL: No thanks.

LEIN: Is there anyone else wishing to testify for or against this? If not, return it to the Planning Commission. Questions of staff? Discussion?

DELEISSEGUES: There's about four or five places in here where the reason that they, where the staff apparently is recommending denial is because there's an excess, we have excess commercial designated sites, but yet the last time when we had excess commercial sites we went for approval, so that's kind of what I was alluding to in the first one we talked about is the inconsistency and I just don't understand why we do this. And this one strikes a lot closer to the last one that we talked about to me where we have a zone change and people don't know about it and they've got a motel there, apparently it's been there for quite a while, obviously it has if it's, and then we rezone out from under it.

LEIN: Well, I thought Mr. Ward's potential suggestion on a concomitant rezone made sense because then you're really addressing the use that's there, you're not opening it up where an applicant comes in, gets it rezoned, then you find that they come in with a completely different use in the future so.

MOSS: I think so too. I think this is one of the unintended consequences of rezoning like this is that you end up with properties that just have to fall into this deterioration mode, I guess that can't be kept up, eventually they may go into some other use, the one that it's zoned for, but in the meantime it's not going to be a pretty sight. Actually I think this is a very good place for a motel. I can see quite a bit of demand for it at this location. And the other thing is I think that there is sufficient land left there that there's very good probability, a possibility, that multi-family zoning will occur. There's still quite

a bit of land left there. You know, I would certainly support what you said, Vaughn. You know, I'd be concerned about some commercial uses that might occur at this location, but the concomitant rezone agreement could certainly take care of that.

TOWNE: I'd like to make, Sandra Towne, I would like to make a comment, and I'm hoping that Rich might help me out with this, concomitant rezones, we do want to be conservative of how we use them. And typically we use them for conditions, transportation issues, if we need design standards, additional of how something is going to develop, but not for zoning reasons. We really need to be careful with that. And maybe Rich can pick up on that for me.

LOWRY: Rich Lowry, Prosecutor's Office. The court cases that have dealt with concomitant rezones and have upheld their use have indicated that the appropriate occasion to use them is where you have a proposal for a comp plan change or a zone change which both furthers and potentially does not further the public interest, and if there are limitations that can be put on through a concomitant rezone agreement that get rid of the potential negative effects and make it clearly, more clearly in the public interest, then it's appropriate.

Now those cases have included instances where you've limited use, so that's an abatable use. I think I agree with Sandra that that's a dangerous precedent, that particularly in Clark County where before the 1980 comp plan virtually every zone change was a concomitant zone change, there was contracts with virtually every zone change that was approved, totally against the concept of those agreements, we're supposed to generally make land use decisions through the comp plan and zoning, not through contracts. But as with the enigma that you faced two weeks ago with a particular use that was only allowed in I think it was highway commercial and that use existed but general highway commercial uses would have been inappropriate, it is a permissible use, but I share Sandra's concern that it's not a good precedent.

DELEISSEGUES: Rich, does it make any difference whether the proponent agrees or volunteers to do that?

LOWRY: Well, the proponent obviously has to agree. Actually the nature of a concomitant rezone agreement is the courts call it a unilateral agreement, the proponent comes forward and says I agree that if you grant me this, the comp plan zone change, I'll live by these limitations and then we accept the concomitant agreement by actually adopting the comp plan or zone change.

MOSS: So is it a dangerous precedent to accept that kind of proposal?

LOWRY: It's a dangerous precedent if it becomes a normal practice.

TOWNE: And maybe I would like to make a comment too that this is a little different from the one that we looked at on June 10th, that was the feed mill, and the reason is that even though it's going forward with a possible to the Board with possibly looking at a concomitant rezone, there is one other solution and that is to make an amendment to

the code, to the commercial use, so that hay and grain uses would be allowed under limited commercial which is a -- could be a reasonable way to handle that so that we would still be zoning it CL, allowing that hay and grain to remain and the additional parcels, and then we would just be making that one use change which we support, staff really supports that hay and grain should belong under limited commercial uses. So we have a solution there that's even over and beyond, different from a concomitant rezone which will probably be brought forward to the Board as a possible option, again to try and avoid concomitant rezone if we can. If we can find a different solution, we would prefer that. Or if we could look at policy to make the decision for zoning rather than concomitant rezone, we would really prefer that.

MOSS: I think those are helpful comments.

LEIN: Okay. With this request, then, where the dot is, that's the only parcel that would be impacted if we grant the applicant's request?

TOWNE: That's correct. It would be this parcel.

MOSS: Does that little leg come around the west side of that below the R there in R-18?

TOWNE: I don't know which one. What you're talking on?

LEIN: Directly under the R there's a small leg that goes out to the street. Right there.

TOWNE: It looks like an access, doesn't it?

MOSS: Yeah, it does.

TOWNE: Colete, are you familiar with that?

ANDERSON: I'm sorry?

TOWNE: This one right here.

MOSS: I guess my question is what happens to that little parcel in the middle there? Is that the same ownership?

ANDERSON: It's part of --

TOWNE: I would assume so.

ANDERSON: It's part of Mr. Patel's site.

WARD: Yes, it is. It's the same parcel, yeah.

MOSS: Okay. Okay.

LEIN: Other questions? Entertain a motion.

RUPLEY: Do we have to wake up to do that?

LEIN: Yes.

MOSS: Go ahead. Well, I'm not going to be shy. In thinking about this there aren't many commercial uses I think that could occupy this site that I would be particularly concerned about. You know, this isn't -- and the site's somewhat limited in size, development's already occurred to the north of it. I think I like this change because it's going to allow this landowner to go ahead and develop something that I think is appropriate in the area, and I'm going to make a **MOTION** that we forward this on to the Board of County Commissioners with a recommendation of approval of the comp plan amendment and zone change.

LEIN: So you're approving the applicant's request?

MOSS: Yes.

LEIN: Is there a second?

DELEISSEGUES: I'll **second** it.

LEIN: Discussion? Could we have roll call, please.

ROLL CALL VOTE

SMITH: AYE
MOSS: AYE
RUPLEY: AYE
DELEISSEGUES: AYE
LEIN: AYE

LEIN: Be forwarded on to the Board of County Commissioners.

PUBLIC HEARING ITEMS & PLANNING COMMISSION ACTION, continued

D2002-033 (Johnson & Mason) The property owners are seeking to redesignate and rezone parcels 118058-000 and 118060-001 for approximately .48 acres from Urban Medium (R-22) to General Commercial (CL) located at 1410 NE 106th Street and 1600 NE 106th Street. Staff contact: **Mike Mabrey 360-397-2375 ext. 4343.**

D2003-002A (Black Jack Fireworks) The property owner is seeking to redesignate and rezone parcels 118055-000, 118056-000, 118060-002, 118060-003 for approximately 3.71 acres from Urban Medium (R-22) to General Commercial (CL) located on NE106th Street. Staff contact: **Mike Mabrey 360-397-2375 ext. 4343.**

MABREY: Mike Mabrey, Planning staff again. We'd like to combine the final two items on your agenda behind Tabs 23 and 24, but they will have to be voted on separately because they are two separate dockets, but they are in the same area and your deliberations will address the same issues. They're essentially the same type of request as well so they're somewhat independent. They're behind 23 and 24 at the back of the binder.

Docket Item 2002-033, Johnson/Mason, is a request to change the comp plan amendment from urban medium to general commercial, change zoning from R-22 to limited commercial for two parcels on 106th Street. The total area of those two is a little over a half an acre. The second request is Docket 2003-002A, the proponent is Black Jack/American Properties, LLC. That involves five separate parcels with a total area of 4.61 acres and they are asking for the same change, from urban medium to general commercial, zone change R-22 to limited commercial. You're probably aware of some of the history of this area and the staff report includes some detail regarding the site plan approvals that have been granted to the Black Jack property in the past. I think it's important to note that the retail sales of fireworks is not allowed outright as a land use action, it's regulated under Clark County Code Chapter 5.28 and requires a separate permit. And it's only allowed for a limited number of days during the year, I counted nine, but it's somewhat less than two weeks at any rate.

So commercial zoning is not required for the storage or wholesaling or retail sales of fireworks, and in fact the warehousing and wholesaling are not allowed in any commercial zone whether it's fireworks or not, so it's important to consider what the actual use of the Black Jack building is and 50 weeks out of the year it's being used to store and wholesale fireworks. In effect it's a use that's appropriate in an industrial zone. Largely as a result of that we're recommending denial of the change to general commercial and approval of a change to light manufacturing.

There's some other findings regarding this that I think support that argument. The commercial designation would be inappropriate for this site, it would dramatically increase the potential year-round traffic impacts on 106th Street which is not developed or likely to be developed to handle those kind of traffic impacts. This area is functionally separated from other commercial districts by Tenney Creek which runs diagonally along the line that Sandra is pointing to. And before I go any further I should point out that that odd-shaped somewhat triangular parcel just to south of that line is not a party to either of these applications. We contacted the property owner, it's on the market currently, they didn't want to be involved in this, in any changes that would affect their, you know, their offer or possibly pending offer. So they declined. Their interest is just selling it so. That would be a concern and something that you might take into account whichever way you decide to go in this area, whether or not to make a recommendation

to the Board to include that parcel as well because otherwise it will remain a small R-22 piece of property.

In terms of the location for commercial it's 600 to 1,000 feet away from Highway 99, it's not bordering on any arterial street, again has poor access. The industrial zoning would be compatible with the industrial zoning zoned area and to the south which is developed with industrial uses. It would reduce conflicts among users of 106th Street and make the expansion of the driveway that has already been done for the Black Jack's annual sales period something that would be a little bit easier to be approved. It went through the process not too long ago and it was denied essentially because it was an expansion of a nonconforming use in a residential district. That's the short version of it. I'd be glad to answer any questions or expand on any of these points.

LEIN: Any questions of Mr. Mabrey? Yeah, Dick.

DELEISSEGUES: Is the applicant agreeable to the zone change to ML or is that a staff recommendation?

MABREY: I think he has a representative here.

LEIN: We'll find out. Mr. Ward.

DELEISSEGUES: Okay. Okay.

MABREY: The Johnson/Mason applicants originally asked for ML and I think they changed their application my understanding on the basis of what was what the other parties were asking for in order to be consistent and all go together.

LEIN: Mr. Ward.

WARD: Thank you. David Ward once again, 915 Broadway. Yeah, and it's unfortunate Mrs. Johnson isn't here tonight because she's really the one who has spearheaded -- sort of head up the effort. If you could point her parcel out, it's the one right there which is the closest one to the actual Black Jack facility which is on the largest parcel you see, and Mrs. Johnson really is the one who came up with the idea of let's go get a zone change. And a reason is a person in her situation or Mr. Johnson's situation, which he's got the small parcel there, and then even the triangular piece that you were just talking about which is sort of I'll call it an out parcel, I don't remember the owner's name, but they're beneficiaries of a trust and I know they're just marketing the property. That piece I believe is about .73 acres and under an R-22 zoning, there's not much you're going to do with that piece, so I would suggest that you include it in whatever you want to do.

One of the things I guess I'll just start with, the R-22 zoning pretty clearly is not the correct zoning for this area, it doesn't recognize the existing use, and we are again with a problem where we have somebody who bought and permitted a facility under a commercial designation, the designation then changes without any notice to them, all of a sudden they want to put in a new driveway and (inaudible) you can't do it because

we're expanding a nonconforming use. And I wasn't involved in the original permitting of the facility, I was involved with the driveway, the reason it was denied was because all the parcels were not zoned commercial. At the time it was the understanding the commercial use was the correct zoning for the property. What I'm hearing is that actually ML is the proper zoning for this particular use and if that's the case, then we're in full support of ML. And I think it does fit real well, I think it's a good compromise, I think it will make Mrs. Johnson happy at least from my discussions with her.

And I agree, I think her original application was more for ML and then we talked about it a little bit more in-depth and decided to go with the commercial zoning because that was what best fit the Black Jack existing use, but I think the ML zoning is a great, is a great fix here and I think it fits right in with what else is going on and it will allow us to expand (inaudible) so. Any questions?

LEIN: Any questions of Mr. Ward? Thank you.

WARD: Thanks.

LEIN: Mr. Fletcher, would you like to testify?

FLETCHER: I don't have anything else to add to all of this.
I would --

LEIN: Excuse me, could you please come up to the microphone because you are adding.

FLETCHER: I'm sorry. I'm Wayne Fletcher and I am one of the owners and the president of (inaudible) Industrial Park, Incorporated which is an ML zoned -- part of ML zone just south of this property you're talking about. And the only thing that come to my mind is that Black Jack's been on this property since before there was zoning. There was no zoning out there when they built this property. My brother Tom was a real estate agent at the time on Highway 99, he sold them the property and oversaw the construction of that plywood building that's been used all these years.

And it's kind of -- it's just interesting to me to sit here and listen to what you guys have to put up with every day and all these changes in this zone, in these zones, all of them, Highway 99 and this property too, but I would just recommend you change the zone for these guys so that they could legally use the property. They've been a nonconforming use on through all the changes since they went in there years ago. I don't remember what year it was. It was in the '80s, early '80s, something like that. Thanks a lot.

LEIN: Any questions of Mr. Fletcher? Thank you. Any other testimony? Return to the Planning Commission. Comments? Questions of staff?

DELEISSEGUES: No. I'd **MOVE** to approve.

LEIN: Which one? Staff recommendation?

DELEISSEGUES: Right, staff recommendation for Docket Number D2003-002A, Black Jack/American Properties.

LEIN: Okay. Are you then also -- that's the first one.

DELEISSEGUES: Well, we got to vote on them separately, but I --

LEIN: Yes. Okay. So we're going to hit Black Jack first. Is there a second to the motion?

SMITH: **Second.**

LEIN: Any further discussion? Could we have roll call, please.

ROLL CALL VOTE

MOSS:	AYE
SMITH:	AYE
RUPLEY:	AYE
DELEISSEGUES:	AYE
LEIN:	AYE

LEIN: Johnson/Mason property, is there a motion?

TOWNE: May I remind you to consider in this next motion whether you want to include that odd parcel or not or recommend to add it.

MABREY: And that would be owned by Cantrell. And the parcel number is 118059, you'll see it on the bottom of the first paragraph in the Johnson/Mason staff report.

LEIN: Thank you.

DELEISSEGUES: I'd **MOVE** that we approve that and include the so-called out parcel Number 11850, 118059.

LEIN: Is there a second?

MOSS: **Second.**

LEIN: Any further discussion? Could we have roll call, please.

ROLL CALL VOTE

MOSS: AYE
SMITH: AYE
RUPLEY: AYE
DELEISSEGUES: AYE
LEIN: AYE

LEIN: That concludes the docket items. We said we would work until they were done. Thank you very much, staff, for bringing all of those back to us as the Planning Commission asked.

OLD BUSINESS

None.

NEW BUSINESS

None.

COMMENTS FROM MEMBERS OF THE PLANNING COMMISSION

None.

ADJOURNMENT

The hearing adjourned at 11: 30 p.m.

All proceedings of tonight's hearing are filed in Clark County Community Development/Long Range Planning. The minutes can also be viewed on the Clark County Web Page at www.co.clark.wa.us/ComDev/LongRange/LRP_PCagenda.asp

Vaughn Lein, Chair

Date

Minutes Transcribed By:
Cindy Holley, Court Reporter
Sonja Wiser, Administrative Assistant